TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 61.

THE NORTHERN PACIFIC RAILWAY COMPANY, APPELLANT,

vs.

A. A. SODERBERG.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

(18,083.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 273.

THE NORTHERN PACIFIC RAILWAY COMPANY, APPELLANT,

vs.

J. A. SODERBERG.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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1 In the Circuit Court of the United States for the District of Washington, Northern Division. In Equity.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant.

Restraining Order.

Whereas, in the above-entitled cause, a motion for the issuance of a preliminary writ of injunction has been filed, and it appearing to the satisfaction of the court that there is danger of irreparable injury being caused to complainant before the said motion and application can be heard on notice, unless pending such hearing and the determination of said motion and application, defendant, his agents, servants, workmen, and employees, be temporarily restrained as herein set forth:

Therefore, complainant's application for such restraining order be, and it is hereby, set for hearing on the 26th day of October, 1898, upon the condition, however, that security is given, as required by law, in the sum of one thousand dollars, for making good
2 to the defendant, J. A. Soderberg, damages and costs that may be awarded them by reason of the granting of this order.

Now, therefore, take notice that you, J. A. Soderberg, your agents, servants, workmen, and employees, and each of you, upon the giving of such bond, are hereby specially restrained and enjoined from further quarrying, excavating, or removing any granite or other stone from the northeast quarter of section nineteen (19), in township twenty-seven (27) north, of range ten (10) east of the Willamette meridian, Washington; and from taking or removing, receiving, buying, selling, or disposing of any of the granite or other stone quarried thereon; and from authorizing others to take, receive, buy, sell, dispose of, or remove such granite or other stone, pending the hearing of said motion and application, which hearing be, and it is hereby, set for the 26th day of October, 1898, at Seattle, Washington, or as soon thereafter as the court can hear and determine the same, and until said motion and application shall be heard and determined, and until further order of the court herein, hereon, and in the premises.

Done in open court, while sitting as circuit judge, this 15th day of October, 1898.

C. H. HANFORD, *Judge.*

(Endorsed:) Restraining order. Filed Oct. 15, 1898. A. Reeves Ayres, clerk. A. N. Moore, dep.

3 In the United States Circuit Court for the District of Washington, Northern Division. In Equity.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant. } No. 719.

Order Modifying Restraining Order.

This court having heretofore, on the 15th day of October, 1898, made and entered an order restraining the defendant herein, his agents, servants, workmen, and employees, from quarrying, excavating or removing any granite or other stone on the northeast quarter of section 19, township 27 north, range 10 east, Willamette meridian, Washington, and from taking or removing, receiving, buying, selling, or disposing of any of the granite or other stone quarried thereon, and from authorizing others to take, re-
4 ceive, buy, sell, dispose of, or remove such granite or other stone pending the hearing of said motion and application set for the 26th day of October, 1898, in the above-entitled court, and it appearing to the court that the said defendant is quarrying stone and operating men upon a portion of the right of way of the Great Northern Railroad Company, running through said section 19, which said right of way at the place where said defendant is quarrying and taking out building stone, is of the width of one hundred feet from the center of the railroad track of the Great Northern railway, now, therefore, it is ordered, adjudged and decreed that the restraining order heretofore referred to be, and the same is hereby, modified, in that the same shall not in any way apply to or affect the defendant in the operation of any quarry or quarries situated upon the said right of way of the Great Northern Railroad Company, pending the hearing of the above-described restraining order, and that the said defendant may work said quarry upon the said right of way of the Great Northern Railway Company the same as if said restraining order had not been issued, until the further order of this court.

Done in open court this 21st day of October, 1898.

C. H. HANFORD, *Judge.*

(Endorsed:) Modification of restraining order. Filed Oct. 21, 1898. In the United States circuit court. A. Reeves Ayres, clerk. By H. M. Walthew, deputy.

In the United States Circuit Court for the District of Washington, Northern Division. In Equity.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant.
No. 719.

Order Granting Injunction.

The motion of complainant in the above-entitled case for an injunction during the pendency of said case, restraining the defendant and all persons acting under him from quarrying, excavating, and removing stone from the northeast quarter (N. E. ¼) of section nineteen (19), township twenty-seven (27) north of range ten (10) east of Willamette meridian, and from selling and disposing of any stone quarried and excavated on said property, coming on for hearing this day, and the motion of the above-named defendant to vacate and discharge the restraining order heretofore granted in the above-entitled case, restraining said defendant from doing any of the acts complained of in plaintiff's bill of complaint, coming on for hearing at the same time, and the court having heard
6 read the affidavits filed in the above-entitled case, and having heard the arguments of counsel for the respective parties, orders:

1st. That the application for said injunction be, and the same is hereby, denied as to any portion of said premises on the north side of the track of the Great Northern Railway Company within one hundred feet from the center of said track.

2d. That said application for an injunction as to the remaining portion of said premises be, and the same is hereby, granted so that the defendant and all persons acting under him be, and they are hereby, until the further order of this court, enjoined and restrained from quarrying, excavating, or removing any stone from said remaining portion of said premises to any greater extent than is necessary for a compliance with the regulations of the Land Department of the United States in regard to assessment-work, and as to any stone quarried, excavated, and removed in good faith for the purpose of complying with said regulations, said defendant is authorized to dispose of the same.

A writ of injunction in accordance with this order is hereby directed to be issued by the clerk of this court, to remain in force until this court shall otherwise order.

It is further ordered that upon the defendant filing in this court a bond in the sum of five thousand dollars, conditioned to pay all damages which this court may award to plaintiff for stone quarried, excavated, or removed from said above-described premises by de-

fendant or any one acting under him, which said bond shall
7 have two good and sufficient sureties approved by this court, then the injunction herein granted shall be dissolved.

Dated Seattle, October 28th, 1898.

C. H. HANFORD,
Judge of the District Court of the United States, Presiding in Circuit Court.

O K.
R. A. BALLINGER.

Copy of within order received this 27th day of Oct. 1898.
BALLINGER, RONALD & B.,
Att'ys for Def't.

(Endorsed:) Order. Filed Oct. 28, 1898. In the United States circuit court. A. Reeves Ayres, clerk. By H. M. Walthew, deputy.

Subpœna ad Respondendum.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, District of Washington. In Equity.

The President of the United States of America to J. A. Soderberg, Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room in
8 Seattle on the 5th day of December, A. D. 1898, to answer a bill of complaint exhibited against you in said court by Northern Pacific Railway Company, who is a citizen of the State of Wisconsin, and to do and receive what the said court shall have considered in that behalf, and this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, this 19th day of October, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the 123d.

[Seal U. S. Circuit Court.]

A. REEVES AYRES, *Clerk*,
By H. M. WALTHEW,
Deputy Clerk.

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit on or before the first Monday of December next at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

A. REEVES AYRES, *Clerk*,
By H. M. WALTHEW,
Deputy Clerk.

9 No. 719.

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF WASHINGTON.

I hereby certify that I received the within writ on the nineteenth day of October, 1898, and personally served the same on the 19th day of Oct. 1898, by delivering to and leaving with the said J. A. Soderberg, at his residence in the city of Seattle, King Co., Washington, a true and correct copy of the within writ, together with a certified copy of a restraining order in said cause to said defendant named therein personally.

Oct. 19, 1898.

Marshal's Fees.

Service	4.00
Mileage	.12
	4.12

C. W. IDE, *U. S. Marshal,*
By JOHN WOODING, *Deputy.*

(Endorsed:) Subpœna. Filed Nov. 3, 1898. In the United States circuit court. A. Reeves Ayres, clerk. By H. M. Walthew, deputy.

10 In the Circuit Court of the United States for the District of Washington, Northern Division. In Equity.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant.

Amended Bill of Complaint.

To the honorable judges of the above-entitled court:

The Northern Pacific Railway Company, a corporation, organized, created, and existing under and by virtue of the laws of the State of Wisconsin, by leave of court first had and obtained, filed this, its amended bill of complaint, against J. A. Soderberg, a citizen and resident of the State of Washington, and thereupon your orator complains and says:

I.

That at all times hereinafter mentioned the Northern Pacific Railroad Company was a corporation, organized, created, and existing under and by virtue of an act of Congress, approved
11 July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route," and the acts and joint resolutions of Congress supplemental thereto and amendatory thereof.

That, by the terms and provisions of said act, said corporation was authorized and empowered to lay out, locate, construct, furnish,

maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior in the State of Minnesota, or Wisconsin, thence westerly by the most eligible railroad route as should be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, to some point on Puget sound, with a branch line, via the valley of the Columbia river, to a point at or near Portland, in the State of Oregon.

II.

That by the third section of said act lands were granted to the said railroad company as follows:

"That there be, and is hereby granted to the 'Northern Pacific Railroad Company,' its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast * * * every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said
12 railroad, whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office, * * * provided, further, that all mineral lands be, and the same are hereby, excluded from the operations of this act and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections, nearest to the line of said road, may be selected as above provided. And provided, further, that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal."

Section 4 of said act is in words and figures as follows, to wit:

"And be it further enacted, That whenever said 'Northern Pacific Railroad Company' shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects requireed by this act, the commissioners shall so report to the President of the United States, and patents of land as aforesaid shall be issued to said company, confirming to said company the right and title to said lands, situated opposite to and coterminous with said completed section of said road; and,
13 from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company, conveying the additional sections of land, as aforesaid, and so

on as fast as every twenty-five miles of said road is completed as aforesaid."

And by the sixth section of said act Congress provided as follows:

"That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or pre-emption before or after they are surveyed, except by said company as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and the act entitled 'An act to secure homesteads to actual settlers on the public doman,' approved May 20, 1862, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company. And the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre when offered for sale."

And that the twelfth section of said act of Congress was and is in words and figures as follows:

"And be it further enacted, That the acceptance of the terms,
14 conditions, and impositions of this act by the Northern Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterward, and shall be served on the President of the United States."

III.

That said railroad company accepted the terms, conditions, and impositions of said act of Congress in writing under its corporate seal, pursuant to the direction of its board of directors first had and obtained, and on the 29th day of December, A. D. 1864, served such acceptance on the President of the United States.

IV.

That by joint resolution approved May 31, 1870, entitled "A resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," the Congress of the United States authorized the said railroad company to locate and construct under the provisions, and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget sound, via the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its trunk line across the Cascade mountains to Puget sound; which said resolution is in words and figures as follows, to wit:

"(No. 67.) A resolution authorizing the Northern Pacific
15 Railroad Company to issue its bonds for the construction of its road and to secure the same by mortgage, and for other purposes.

"Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bonds to aid in the construction and equipment of its road and to secure the same by mortgage on its property and rights of property of all kinds and descriptions, real, personal, and mixed, including its franchises as a corporation; and, as proof of its legal execution and effectual delivery, said mortgage shall be filed and recorded in the office of the Secretary of the Interior, and also to locate and construct under the provisions, and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget sound, via the valley of the Columbia river, with the right to construct its branch from some convenient point on its main trunk line across the Cascade mountains to Puget sound; and in the event of there not being in any State or Territory in which said main line or branch may be located at the time of the final location thereof, the amount of lands per mile granted by Congress to said company within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land, belonging to the the United States and designated by odd numbers, in such State or Territory within ten miles on each side of the said road, beyond the limits prescribed in said charter, as will make up such deficiency on said line or branch, except mineral and
16 other lands as excepted in the charter of said company of 1864, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre empted or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four. And that twenty-five miles of said main line, between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the first day of January, anno Domini, eighteen hundred and seventy-two, and forty miles of the remaining portion thereof each year thereafter until the whole shall be completed between said points; provided, that all lands hereby granted to said company which shall not be sold or disposed of, or remain subject to the mortgage by this act authorized, at the expiration of five years after the completion of the entire road, shall be subject to settlement and pre-emption like other lands, at a price to be paid to said company not exceeeding two dollars and fifty cents per acre, and if the mortgage hereby authorized shall, at any time, be enforced by foreclosure or other legal proceedings, or the mortgaged lands hereby granted, or any of them, be sold by the trustees to whom such mortgage may be executed, either at its maturity, or for any failure or default of said company under the terms thereof such lands shall be sold at public sale, at places within the States and Territories in which they shall be situate after not less than sixty days' previous notice, in single sec-

tions or subdivisions thereof, to the highest and best bidder; provided, further, that in the construction of the said railroad
17 American iron and steel only shall be used, the same to be manufactured from American ores exclusively.

"SEC. 2. And be it further resolved that Congress may, at any time, alter or amend this joint resolution, having due regards to the rights of said company, or any other parties.

"Approved May 31st, 1870."

V.

And your orator further shows that thereafter said Northern Pacific Railroad Company proceeded with the work of surveying and definitely locating the line of its branch railroad, extending from Pasco Junction, a point on the main line of said railroad, in the Territory (now State) of Washington, to Tacoma, in said Territory (now State) of Washington, and a point on Puget sound, and prior to March 26, 1884, had so surveyed and definitely located said branch railroad hereinafter, for the purpose of convenience, designated as the Cascade branch, extending coterminous with, and within forty miles of, the northeast quarter of section nineteen (19), township twenty-seven (27), north of range ten (10), east of the Willamette meridian, Washington and on the 26th day of March, 1884, filed a plat of said portion of the definite location of said Cascade branch, which said plat had been duly approved by the Secretary of the Interior, in the office of the Commissioner of the General Land Office.

And your orator further shows that at the date of the grant to said Northern Pacific Railroad Company, at the date of the joint resolution of May 31st, 1870, and at the time the line of said Cascade
18 branch of said Northern Pacific railroad, coterminous with said described land, was definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, to wit, March 26th, 1884, said land was public land, to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and was free from pre-emption or other claims or rights, and said land was, and is, non-mineral in character.

And your orator further shows that after definitely fixing the line of said Cascade branch coterminous with said land, as aforesaid, the said Northern Pacific Railroad Company proceeded with the construction of its railroad and telegraph line on, over, and along said line of definite location, and having constructed a section of over twenty-five miles of said railroad and telegraph line, extending opposite to and coterminous with said land, the said company so reported to the President of the United States, and thereupon the President of the United States appointed three commissioners to examine said line of railroad and telegraph, and the said commissioners having examined said constructed portion of said railroad and telegraph line, extending opposite to and coterminous with the land hereinbefore described, duly reported that the same had been constructed in a good, substantial, and workmanlike manner, in all respects as required by said act of Congress, and thereupon, to wit, April 23, 1884, the President of the United States approved said re-

port, accepted said railroad and telegraph line, and directed that patents for the odd-numbered sections of public land, not mineral, coterminous therewith, should be issued, conveying the said
19 lands to said Northern Pacific Railroad Company, but no patent has yet issued for the premises hereinafter described.

And your orator further shows that by virtue of the definite location of said portion of the Cascade branch of the Northern Pacific railroad, and the construction, completion, and acceptance of said portion of said railroad and telegraph line, said Northern Pacific Railroad Company became, and until the 31st day of August, 1896, was the owner of said northeast quarter of section nineteen (19), township twenty-seven (27) north of range ten (10) east of the Willamette meridian, Washington, and thereafter was entitled to the exclusive possession of said premises.

VI.

That your orator, The Northern Pacific Railroad Company, is a corporation organized, created and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen of the State of Wisconsin, and was not organized nor is it a corporation under the laws of the State of Washington.

VII.

That on or about the 31st day of August, 1896, your orator, said Northern Pacific Railway Company, by virtue of certain deeds of conveyance, duly signed, executed and delivered, became the successor in interest of said Northern Pacific Railroad Company, and became the owner of all property of whatsoever kind of said Northern Pacific Railroad Company, under and by virtue of the foreclosure sale and confirmation of sale in that certain action in the
20 above-named court, wherein The Farmers' Loan and Trust Company was complainant and The Northern Pacific Railroad Company *et al.* were defendants.

VIII.

That your orator, The Northern Pacific Railway Company, now is, and ever since the 31st day of August, 1896, has been continuously, operating said railroad as a common carrier for the purpose of transporting passengers, freight, and the United States mails, and prior to said date the N. P. R. R. Co. had continuously operated said road for said purposes from and after the construction of said road.

IX.

And your orator further shows that said northeast quarter of section nineteen (19), township and range aforesaid, is rough mountainous land, and its principal value consists in the existence thereon of a ledge of granite. That the granite upon said land is of a good and merchantable quality, and is subject to be quarried, and is of great value, to wit, of the value of $5,000.

And your orator further shows that the said defendant, J. A. Soderburg, on or about the — day of ——, 1898, entered upon said described land, and without any right, authority or permission from your orator so to do, and against the will of your orator, and without any right or authority whatsoever, and commenced to excavate, blast, quarry, and remove from said described land the granite therein, and to sell and dispose thereof, and has since continued daily so to quarry, excavate, and remove, sell, and dispose of said granite, and threatens to, and will, unless re-
21 strained by the order of this honorable court as your orator verily believes, continue so to quarry, excavate, and remove, sell, and dispose of the granite from said described land, and will thereby greatly impair the value of said land, and so commit irreparable injury thereto and to the interest of your orator therein. That as your orator is informed and believes, the said defendant, his agents, servants, workmen, and employees have so quarried, excavated, and removed from said described land, and shipped to the city of Spokane, over 8,000 lineal feet of granite, of the value of one dollar and ten cents ($1.10) per lineal foot in said city of Spokane. That said defendant, as your orator is informed and believes, is insolvent, financially irresponsible, and unable to respond for the injury done by such quarrying, excavating, and removal of said granite, and which will be done by the continued quarrying, excavating, and removal of said granite, and said described acts work irreparable injury to your orator, said Northern Pacific Railway Company.

X.

That defendant, as complainant is informed and believes, has made and filed what purports to be a mineral location of and upon the above-described premises, and claims them as such, for the granite thereon, which granite may be used for building purposes, and by reason of there being granite or building stone on said premises, and the purported locations thereof as alleged mineral claims by defendant, defendant asserts that said premises are excepted from the said act of June 2, 1864, and the said grant to the Northern Pacific Railroad Company, and acts and resolutions
22 amendatory thereof and supplemental thereto, and the question of whether said premises are mineral or non-mineral has not yet been determined by the Land Department of the United States.

XI.

That defendant was, at the time of filing the original bill, and for a long time prior thereto had been, and ever since said date has been a resident and citizen of the State of Washington.

Forasmuch as your orator can have no adequate relief except in this court, and to the end, therefore, that it may obtain the relief to which it is justly entitled in the premises, your orator now prays the court to grant it a writ of subpœna of the United States of America, directed to said defendant, J. A. Soderberg, hereinbefore named, requiring and commanding him to appear herein and

answer, but not under oath, an answer under oath being hereby expressly waived, the several allegations in this, your orator's bill of complaint, contained.

And your orator further prays that your honors may grant a writ of injunction, issuing out of and under the seal of this honorable court, perpetually enjoining and restraining the said defendant, his agents, servants, workmen, and employees, from further quarrying, excavating, and removing any granite or other stone from said northeast quarter of section nineteen (19), township twenty-seven (27) north of range ten (10) east of the Willamette meridian, Washington; and from taking or removing, buying, selling, or disposing of any of the granite or other stone so quarried therein; and from authorizing others to take, receive, buy, sell, remove or dispose of such granite or other stone.

23 And your orator further prays that a provisional or preliminary order may issue, restraining said defendant, his agents, servants, workmen, and employees from further quarrying, excavating and removing any granite or other stone from said described land, and from taking, receiving, buying, selling or disposing of any of the granite or other stone quarried thereon or removed therefrom, and from authorizing others so to take, receive, buy, sell, dispose of, or remove such granite or other stone, pending the final decree herein.

And your orator further prays that said defendant may be ordered and decreed to account to your orator for any and all granite or other stone which he, his agents, servants, workmen, and employees, may have quarried and removed from said land, or any thereof, and to pay unto your orator the value of the granite or other stone so quarried or removed.

And your orator prays that it may have such other and further relief as the equity of the case may require, and to your honors may seem meet.

STEPHENS & BUNN,
Solicitors for Complainant.

STATE OF WASHINGTON, } ss:
County of Spokane, }

F. D. Gibbs, being first duly sworn, upon oath deposes and says: That he is an officer of The Northern Pacific Railway Company, a corporation, the complainant in the above-entitled action, to wit, its general agent, at the city of Spokane, in the State of Wash-
24 ington, and makes this verification for and on behalf of said complainant; that he has read the above and foregoing bill of complaint, and knows the contents thereof; and that the same is true, as he verily believes.

F. D. GIBBS.

Subscribed and sworn to before me this 3d day of January, 1899.
[NOTARIAL SEAL.] E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

Due service of within amended bill by receipt of a true copy thereof admitted this 6th day of January, 1899.

BALLINGER, RONALD & BATTLE,
Sol's for Defendant.

(Endorsed:) Amended bill of complaint. Filed Jan. 6, 1899. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

25 In the Circuit Court of the United States for the District of Washington, Northern Division. In Equity.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant. } No. 719.

Amended Answer to Amended Bill of Complaint.

To the honorable judges of the above-entitled Court:

This defendant, saving and reserving unto himself the benefit of all exceptions to the errors and imperfections in said amended bill contained, for answer to so much thereof as he is advised it is necessary or material for him to answer unto, does aver and say:

I.

That he admits the allegations of paragraphs one, two, three, and four of said bill of complaint.

II.

Defendant further admits that thereafter the said Northern Pacific Railroad Company proceeded with the work of surveying and
26 locating the line of its branch railroad, extending from Pasco Junction to Tacoma, but as to whether said Northern Pacific Railroad Company, prior to March 26, 1884, had so surveyed and definitely located said Cascade branch, extending coterminous with and within forty miles of, the northeast quarter of section nineteen (19), township twenty-seven (27) north, of range ten (10) east of the Willamette meridian, Washington, and as to whether, on the 26th day of March, 1884, said railroad company filed a plat of said portion of the definite location of said Cascade branch, and as to whether said plat had been duly approved by the Secretary of the Interior, this defendant has no knowledge or information sufficient to form a belief, and therefore demands the proof of the same; and defendant further admits that the lands and premises described in the bill of complaint were at the date of the grant to said Northern Pacific Railroad Company, and at the date of joint resolution of May 31, 1870, and on March 26, 1884, were public lands to which the United States had full title, but denies that said lands were not reserved or otherwise appropriated, and that they were free from pre-emption or other claims or rights, but avers the truth to be that they were reserved and otherwise appropriated, and were not free from pre-emption or other claims or rights, and denies that said land was

and is non-mineral in character, but avers the truth to be that said land was at all of said time, and still is, mineral in character, and as such was by the terms of said grant to said Northern Pacific Railroad Company reserved and otherwise appropriated from said grant, and defendant further admits that after definitely fixing the line of said Cascade branch
27 coterminous with the lands aforesaid, the said Northern Pacific Railroad Company proceeded with the construction of its railroad and telegraph lines on, over and along said line of location, and having constructed a section of over twenty-five miles of said railroad and telegraph lines, extending opposite to and coterminous with the land described in said bill of complaint, the said company so reported to the President of the United States, and thereupon the President of the United States appointed three commissioners to examine said line of railroad and telegraph, and admits that said commissioners, having examined said constructed portion of said railroad and telegraph line, reported that the same had been constructed in a good, substantial and workmanlike manner, but as to whether on the 23d day of April, 1884, or at all, the President of the United States approved said report, accepted said raiload and telegraph line, and directed that patents for the odd-numbered sections of public lands not mineral, coterminous therewith, should be issued conveying said lands to said Northern Pacific Railroad Company, this defendant has no knowledge or information sufficient to form a belief, and demands proof of the same; and defendant further admits that no patent has as yet issued for any of the premises mentioned in the bill of complaint herein, and defendant further denies that by virtue of the definite location of said portion of the Cascade branch of the Northern Pacific railroad, and the construction, completion, and aceptance of said portion of said railroad and said telegraph line, said Northern Pacific Railroad Company became the owner, or that until the 31st
28 day of August, 1896, it remained the owner of the northeast quarter of section nineteen (19), township twenty-seven (27) north, of range ten (10) east of the Willamette meridian, Washington, or any part thereof, and denies that said railroad company thereafter was entitled to the possession at all of the same.

III.

That defendant admits paragraph six of said bill of complaint.

IV.

Defendant admits that on or about the 31st day of August, 1896, the complainant herein, said Northern Pacific Railway Company, by virtue of certain deed of conveyance, became the successor in interest of the Northern Pacific Railroad Company, and became the owner of the property of the said Northern Pacific Railroad Company, under and by virtue of a foreclosure sale and confirmation mentioned in paragraph seven of said bill of complaint, but denies that at said time the said Northern Pacific Railroad Company owned, or that by said conveyance or foreclosure conveyed to, or

that any portion of the said northeast quarter of section nineteen (19), township twenty-seven (27) north, of range ten (10) east, passed to or became the property of the said Northern Pacific Railway Company.

V.

Defendant admits the allegations of paragraph eight of said bill of complaint.

VI.

The defendant further admits that the said northeast quar-
29 ter of section nineteen (19), township and range aforesaid is rough, mountainous land, and its principal and only value consists in the existence thereon of a ledge of granite; that the granite upon said land is of a good and merchantable quality, and is subject to be quarried, and is of great value, and defendant further admits that he entered upon said described land, but alleges the date of entry to be long prior to the date mentioned in the bill of complaint of the complainant, but denies that said entry was without right or authority, and admits that he commenced to excavate, blast, quarry, and remove from said described land the granite thereon, and to sell and dispose thereof, and admits that he has since continued daily so to quarry, excavate, and remove, sell, and dispose of said granite, at such times when an opportunity to sell said granite presented itself, but denies that any acts of his are an injury to the interest of the complainant in said land, and denies that said complainant has any interest in said land, but admits that he has, through himself, and his agents, and servants, and workmen, quarried, excavated, and removed from said land over eight thousand lineal feet of granite, but denies the value of the same to be over 10c. per lineal foot, but denies that he is insolvent or financially irresponsible, or unable to respond for any injury which may have been done by such quarrying, excavating, and removing, and denies that any injury has been done to the said land or to the said complainant, and denies that the said complainant has any interest whatever in said property.

VII.

Defendant admits that he has made and filed a mineral
30 location of and upon a certain portion of the premises hereinafter described, and that he claims said portion for the granite thereon, which granite may be used for building purposes, and defendant admits that he asserts that said premises are excepted from the grant to the Northern Pacific Railroad Company, but defendant denies that the question whether said premises are mineral or non-mineral has not yet been determined by the Land Department of the United States, but avers the truth to be that the same has been determined, and that it has been determined that the said lands are mineral lands.

VIII.

Defendant admits the allegations of paragraph eleven of said bill of complaint.

And for a further and affirmative defense and cross-complaint and counter-claim, this defendant alleges:

I.

That at all times prior to and on the 14th day of April, 1897, the lands described in the bill of complaint herein as the northeast quarter of section nineteen (19), township twenty-seven (27) north of range ten (10) east of the Willamette meridian, Washington, were unsurveyed and unoccupied public lands of the United States, and were mineral lands and valuable only for the granite or building stone thereon, and were free and open to exploration and purchase, and subject to entry and claim under the mining laws of the United States.

II.

That on said 14th day of April, 1897, this defendant, John
31 A. Soderberg, being then and there a citizen of the United States, and being then in all respects qualified to enter mineral land under the laws of the United States, did then and there, in accordance with the said mining laws of the United States, and the regulations and rules of the mining district in which said lands were situated, enter upon that certain portion of said lands described in the bill of complaint herein, hereinafter described, and locate thereon under the laws and rules applicable to and governing the location and entry of placer claims, two certain mining or mineral claims, as follows, to wit: The Lillie, containing 11.401 acres, and the Linea, containing 12,865 acres, said claims being adjacent claims, and being hereinafter more particularly described, and which said locations were, and each of them was, distinctly marked on the ground, so that its boundaries could be readily traced, and thereafter on, to wit, the 16th day of April, 1897, this defendant did duly cause a record of said locations and said mining claims to be entered upon the public records of said mining district, and of the county of Snohomish, the same being the county in which said lands and claims were situated, as required by the laws of the United States and the State of Washington, and the local rules and regulations of said mining district, which said records, and each of them, contained the name of this defendant as locator, with the date of said location, together with such description of the claims located, by reference to some natural object or permanent monument, as to enable said claims to be identified.

32 III.

That having located said claims, and having recorded the same as aforesaid, the defendant entered upon the development of the same, and between said location and the date of application for patent hereinafter mentioned, continued thereon in person, and with a

large number of laborers and with expensive machinery, and expended in labor and improvements upon and in developing each of said claims a sum of money in excess of five hundred ($500.00) dollars.

IV.

That thereafter on, to wit, the 5th day of October, 1898, this defendant did, in due form, file in the land office in Seattle, Washington, the same being the land office in the district in which said claims were located, an application to purchase said Lillie and said Linea mining claims as such mineral lands and as such adjacent claims, and did then and there make oath before the register and receiver of said land office and file the same in said land office, showing the compliance by defendant with the mining laws of the United States, together with a plat and field-notes of the claims, made under the direction of the United States surveyor general for Washington, showing accurately the boundaries of the claims, and of each of them, which were distinctly marked by monuments on the ground, and showing further that said claims would fall within the boundaries of the northeast quarter of section nineteen (19), in township twenty-seven (27) north of range ten (10) east of the Willamette meridian, when the public survey should be ex-
33 tended over them, and did then and there, previous to filing said application, post in a conspicuous place on the claims embraced therein a copy of such plat, together with a notice of such application for patent, which said plat and notice did then and there remain conspicuously posted on said premises during the period of publication hereinafter mentioned, and did then and there file in said land office with his application an affidavit of two persons that such plat and notice had been duly posted, and likewise filed at said time and in said land office a copy of said notice so posted, and by said application he requested to be permitted to purchase said claims as mineral land, and he then and there undertook and offered to maintain by proof that the said claims were valuable only for the granite and building stone contained therein and thereon, and were mineral lands of the United States to which he was entitled under the laws thereof, and that he had done the requisite amount of work in labor and improvements thereon, to wit, work on each claim of the value of over seven hundred ($700.00) dollars, and was entitled to a patent therefor. That said application and affidavit and notice and plat and field-notes being filed as aforesaid, and being then and there entered of record in said United States land office by the register and receiver thereof, said application was duly set for hearing, and notice of said application and hearing in due form of law was given and published by the register for the period of sixty days in the proper newspaper, to wit, in the newspaper published nearest to the claims designated for the purpose, and said register did also post such notice in his office for the same period, which said entry, application, affidavit, notice, plat and
34 field-notes were in all respects formal according to law, and this defendant, as claimant, did further, at the time of filing

his application, file with the register of the said land office a certificate of the United States surveyor general that over five hundred (500.00) dollars' worth of labor had been expended or improvements made upon each of said claims by this claimant, and that said plat so filed was correct, with such further description, by reference to natural objects or permanent monuments, as should identify the claims or each of them, and furnish an accurate description to be incorporated in the patent; and at the expiration of the said sixty days of publication, this defendant, the claimant therein, did file in said land office his affidavit showing that the plat and notice aforesaid had been posted in a conspicuous place on the claims, and had remained and been kept so posted during said period of publication.

V.

That no adverse claim and no protest was filed with the register and receiver of said land office at the expiration of said sixty days of publication, or before said time or at all, by the complainant herein or by any other person, although said complainant had special notice of the pendency of the application of this defendant in said matter.

VI.

That this defendant, having complied with all the rules and regulations of the Land Department and of the mining laws of the United States in this behalf, and having made his proof as hereinbefore alleged, it was assumed and decided by the Land Department
35 of the United States that this defendant, the applicant therein, was entitled to a patent upon the payment of the proper fee and the price per acre for said land, and that no adverse claim existed; whereupon, this defendant, the claimant therein, duly paid all of the fees required in said land office, and duly paid the price per acre for said lands, and received, on the 20th day of December 1898, from said land office, the receiver's receipt, showing said sum to be in payment in full for the area embraced in the mining claims known as the Lillie and Linea above mentioned, and said proof and records were duly transmitted to the Land Department of the United States, Washington, D. C., with recommendation that patent be issued in due form to the claimant, this defendant, for said lands.

VII.

That the claims entered, purchased, and claimed by this defendant as such mineral lands, are described as follows, to wit:

Description of "Linea."

Beginning at corner No. 1, whence the corner common to sections 13 and 24, township 27 north, range 9 east, Willamette meridian, and sections 18 and 19, township 27 north, range 10 east, Willamette meridian, bears north 77 degs. 59 mins. west, 2,438.80 feet, and the corner common to sections 17, 18, 19, and 20, township 27

north, range 10 east, Willamette meridian, bears north 80 degs. 19½ mins. east, 2,981.80 feet; running thence north 73 degs. 20 mins. east, variation 22 degs. 50 mins. east, 600 feet, to corner No. 2, whence Index mountain bears south 9 degs. 58 mins. west;
36 thence running south 12 degs. 38 mins. east, variation 23 degs. 15 mins. east, 1,038 feet. to corner No. 3, whence the right bank of the north fork of the Skykomish river bears south 12 degs. 38 mins. east, 35 feet; thence south 73 degs. 20 mins. west, variation 23 degs. 12 mins. east, 600 feet to corner No. 4, whence the right bank of the Skykomish river bears south 40 degs. east, 79 feet; thence north 12 degs. 38 mins. west, variation 23 degs. 0 mins. east, 1,038 feet, to corner No. 1, the place of beginning.

Description of "Lillie."

Beginning at corner No. 1, which is identical with corner No. 2 of the Linea claim hereinbefore described, and from which the corner common to sections 13 and 24, township 27 north, range 9 east, Willamette meridian, and sections 18 and 19, township 27 north, range 10 east, Willamette meridian, bears north 83 degs. 31¾ mins. west, 2,979.10 feet, and the corner common to sections 17, 18, 19, and 20, township 27 north, range 10 east, Willamette meridian, bears north 82.04½ mins. east, 2,387.40 feet, running thence south 76 degs. 34 mins. east, variation 23 degs. 15 mins. east, 600 feet to corner No. 2; thence running south 12 degs. 38 mins. east, variation 22 degs. 30 mins. east, 1,038 feet, to corner No. 3, whence Mt. Index bears south 14 degs. 26 mins. west, and the right bank of Skykomish river bears south 34 feet; thence north 76 degs. 34 mins. west, variation 23 degs. 10 mins. east, 600 feet, to corner No. 4, being identical with corner No. 3 of the Linea claim, hereinbefore described; thence north 12 degs. 38 mins. west, along the east line of the Linea, the same being the west line of the Lillie claim, 1,038 feet, to corner No. 1, place of beginning.

37 These claims will form a portion of the north half of section 19, township 27 north, range 10 east, Willamette meridian, when said township shall have been surveyed.

VIII.

That by reason of the premises herein, this defendant is now the owner of said portion of the lands described in the bill of complaint herein, as is described and set forth herein as the Lillie and Linea mining claims.

Second Affirmative Defense.

This defendant further, not confessing all or any of the matters in said bill of complaint to be true as therein alleged, for a second plea to said bill, by way of further defense, cross-complaint, and counterclaim, avers and says:

I.

That by an act of Congress, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," approved June 3, 1878, and long prior to the date of the filing of the definite location of the line of railway of the complainant herein, Congress reserved from the grant of lands to said Northern Pacific Railroad Company, and otherwise appropriated, all lands in the States and in said Washington Territory, mentioned in said title, valuable chiefly for stone.

II.

That by said act of Congress aforesaid all of the lands within the limits of the grant to the said Northern Pacific Railroad
38 Company, valuable chiefly for stone, including the lands described in this defendant's first affirmative defense and cross-complaint herein, were withdrawn from said grant and otherwise appropriated, and the same were not included in the grant of lands passing to said railroad company at the date of definite location of the line of their railroad aforesaid.

Wherefore, the defendant prays that the complainant take nothing by its complaint herein, and that defendant be decreed to be the owner of said Lillie and Linea mining claims, and that title thereto be confirmed in him, and the same be quieted, and for such other and further relief as to the court may seem meet and equitable in the premises.

BALLINGER, RONALD & BATTLE,
Attorneys for Defendant.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

J. T. Ronald, being first duly sworn, on oath says: That he is one of the attorneys for the defendant in the above-entitled action; that he has heard the foregoing amended answer read, knows the contents thereof, and believes the same to be true; that he makes this affidavit because defendant is a non-resident of the county of King, and is not now within said county of King to make this verification in his own behalf.

J. T. RONALD.

Subscribed and sworn to before me this 19th day of Sept., A. D. 1899.

[NOTARIAL SEAL.] A. J. TENNANT,
Notary Public in and for Washington,
Residing at Seattle.

39 (Endorsed:) Amended answer to amended bill of complaint. Filed in the United States circuit court, district of Washington, Sep. 30, 1899. A. Reeves Ayres, clerk. H. M. Walthew, dep.

In the Circuit Court of the United States for the District of Washington, Northern Division, Holding Terms at Seattle, Washington. In Equity.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant.

Replication.

The complainant, The Northern Pacific Railway Company, for replication to the answer of the defendant, J. A. Soderberg, to the amended bill herein, says and alleges:

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto saith, that it doth and will aver, maintain, and prove its said amended bill to be true, certain, and sufficient in the law to be answered unto by said defend-
40 ant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, and that the said answer is untrue; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court may direct, and humbly prays as in and by its amended bill it hath already prayed.

STEPHENS & BUNN,
Solicitors for Complainant.

STATE OF WASHINGTON, } ss:
County of Spokane, }

Jno. W. Hill, being first duly sworn, upon oath deposes and says: That he is general agent of The Northern Pacific Railway Company, complainant in the above-entitled suit, located and residing at Spokane, Washington, and makes this verification and affidavit for and on behalf of said complainant; that he has read the above and foregoing replication and knows the contents thereof, and that the same is true as he verily believes.

JNO. W. HILL.

Subscribed and sworn to before me this 27th day of September, 1899.

[NOTARIAL SEAL.] E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

(Endorsed:) Replication. Filed Sep. 30, 1899. A. Reeves Ayres, clerk. A. N. Moore, dep.

41 In the Circuit Court of the United States for the District of Washington, Northern Division, Holding Terms at Seattle, Washington. In Equity.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant.
} No. 719.

Answer to Affirmative Defense.

Answering the cross-complaint and counter-claim attempted to be set forth and pleaded in the answer of defendant herein, comes now the complainant, The Northern Pacific Railway Company, and, saving and reserving unto itself the benefit of all exceptions to the errors and imperfections in said alleged cross-complaint and counter-claim contained or pleaded in the answer of defendant herein, for answer to so much thereof as it is advised it is necessary and material for it to answer unto, doth aver and say:

1. It denies that on April 14th, 1897, or at all times prior to the 14th day of April, 1897, or any time prior thereto after July 2, 1864, the lands described in the bill of complaint herein as the north-
42 east quarter of section nineteen (19), township twenty-seven (27) north of range ten (10) east of the Willamette meridian, Washington, were unsurveyed and unoccupied lands of the United States, or were mineral lands valuable only for the granite and building stone thereon, and denies that said premises, or any part thereof, were free or open to exploration or purchase or subject to entry or claim under the mining laws of the United States, or any law or laws of the United States, except under the act of Congress granting lands to the Northern Pacific Railroad Company.

2. Complainant denies that defendant, on April 14, 1897, or at any other time or date, did enter, in accordance with the mining laws of the United States and the rules and regulations of the mining district in which the lands were situated, or otherwise, or at all, upon, or locate thereon, under the laws and rules applicable to and governing the location and entry of placer claims, two certain mineral or mining claims described in paragraph two of the alleged counter-claim, or any mineral claim whatever. Complainant admits that a record of alleged entries was made as alleged in paragraph two of said cross-bill and counter-claim, but denies that said record, or any part thereof, was authorized or permitted by law, and in this connection alleges that said lands were not subject to location or appropriation as placer mineral claims, or otherwise, or at all, as mineral lands, and in this connection complainant alleges that said lands were granted to the Northern Pacific Railroad Company, of which complainant is successor, by act of July 2, 1864, and the subsequent matters and
43 things as set forth and alleged in the amended bill of complaint of complainant herein.

3. Complainant denies that defendant has put upon said premises, or any part thereof, expensive machinery, and denies that said

property, or any part thereof, has been improved by work upon or development of the same as alleged mineral claims.

4. Complainant denies that it had any special or other notice of the proceedings alleged to have been taken by defendant in the United States Land Office, or elsewhere, upon application for patent, and alleges in this connection that the land described in the amended bill of complaint herein was not subject to appropriation as mineral land, and, therefore, all the acts of the defendant and all the proceedings had with reference to obtaining patent and attempted mineral location and appropriation of said land, or any part thereof, were, and are, and each of them is, without effect, and null and void. And, therefore, denies that defendant, by affidavit or otherwise, shows compliance with the mining laws or law of the United States, or any part of such law.

5. Complainant denies that, by reason of the matters and things alleged in the alleged cross-bill and counter-claim of defendant, or for any other reason, or any other account, or otherwise, or at all, defendant is now, or ever has been, the owner of that portion of the lands described in the amended bill of complaint herein, mentioned and described in paragraph seven of said alleged cross-bill and counter-claim as mineral claims, or any part thereof, or of either of them.

44 And having thus fully made answer to said alleged cross-bill and counter-claim, complainant prays that defendant have and take nothing thereby or thereunder, and that complainant be dismissed with its costs, and further prays relief as in its amended bill set forth and prayed.

STEPHENS & BUNN,
Solicitors for Complainant.

STATE OF WASHINGTON, }
County of Spokane, } *ss:*

Jno. W. Hill, being first duly sworn, upon oath deposes and says: That he is general agent of The Northern Pacific Railway Company, complainent in the above-entitled suit, located and residing at Spokane, Washington, and makes this affidavit and verification for and on behalf of said complainant; that he has read the above and foregoing answer to affirmative defense and knows the contents thereof; and that the same is true, as he verily believes.

JNO. W. HILL.

Subscribed and sworn to before me this 27th day of September, 1899.

[NOTARIAL SEAL.] E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

(Endorsed:) Anwer to affirmative defense. Filed Sept. 30, 1899. A. Reeves Ayres, clerk. A. N. Moore, deputy.

45 In the Circuit Court of the United States in and for the Ninth Judicial Circuit, District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant.

Stipulation as to Facts.

It is hereby agreed that the above-entitled action may be, and is hereby, submitted upon the merits, upon the following agreed facts:

I.

That at all times hereinafter mentioned the Northern Pacific Railroad Company was a corporation created, organized, and existing under and by virtue of an act of Congress, approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast by the northern route," and the acts and joint resolutions of Congress supplemental thereto and amendatory thereof.

That, by the terms and provisions of said act, said corporation was authorized and empowered to lay out, locate, construct,
46 furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as should be determined by said company, within the Territory of the United States, on a line north of the forty-fifth degree of latitute, to some point on Puget sound, with a branch line, via the valley of the Columbia river, to a point at or near Portland, in the State of Oregon.

II.

That by the third section of said act of Congress there was granted to the said Northern Pacific Railroad Company, to aid in the construction of its railroad and telegraph line provided for in said act, the following lands:

"And be it further enacted That there be, and hereby is, granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or

other claims or rights, at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections; provided, that if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act; provided, further, that the railroad company receiving the previous grant of land may assign their interest to the said Northern Pacific Railroad Company, or may consolidate, confederate and associate with said company upon the terms made in the first section of this act; provided, further, that all mineral lands be, and the same are hereby, excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest to the line of said road may be selected as above provided; and provided, further, that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal; and provided, further, that no money shall be drawn from the Treasury of the United States to aid in the construction of the said Northern Pacific railroad."

47

48 Section four (4) of said act is in the words and figures as follows to wit:

"And be it further enacted, That whenever said Northern Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said land situated opposite to, and coterminous with, said completed section of said road; and, from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid; provided, that not more than ten sections of land per mile, as said road shall be completed, shall be conveyed to said company for all that part of said railroad lying east of the western boundary of the State of Minnesota, until the whole of said railroad shall be finished and in good

running order as a first-class railroad from the place of beginning, on Lake Superior, to the western boundary of Minnesota;
49 provided, also that lands shall not be granted under the provisions of this act on account of any railroad, or part thereof, constructed at the date of the passage of this act."

Section six (6) of said act is in the words and figures following, to wit:

"And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of the said railroad; and the odd sections of land hereby granted shall not be liable to sale, or entry, or pre-emption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company. And the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre when offered for sale."

And that the twelfth section of said act is in the words and figures following, to wit:

"And be it further enacted, That the acceptance of the terms, conditions, and impositions of this act by the said Northern Pacific Railroad Company shall be signified in writing under the corpo-
50 rate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterward, and shall be served on the President of the United States."

And the twentieth section of said act is in words and figures as follows, to wit:

"And be it further enacted, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend, or repeal this act."

III.

That the said railway company accepted the terms, conditions, and impositions of said act of Congress in writing under its corporate seal, pursuant to the direction of its board of directors first had and obtained, and on the 29th day of December, A. D. 1864, served such acceptance on the President of the United States.

IV.

That, by joint resolution, approved May 31, 1870, entitled "A resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road and to secure the same by mortgage, and for other purposes," the Congress of the United
51 States authorized the said railroad company to locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget sound, via the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade mountains to Puget sound; which said resolution is in words and figures as follows, to wit:

"(No. 67.) A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road and to secure the same by mortgage, and for other purposes.

"Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bonds to aid in the construction and equipment of its road, and to secure the same by mortgage on its property and rights of property of all kinds and descriptions, real, personal, and mixed, including its franchise as a corporation; and, as proof and notice of its legal execution and effectual delivery, said mortgage shall be filed and recorded in the office of the Secretary of the Interior; and also to locate, and construct under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget sound, via the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade mountains to Puget sound; and in the event of there not being in any
52 State or Territory in which said main line or branch may be located, at the time of the final location thereof the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled under the direction of the Secretary of the Interior to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State of Territory, within ten miles on each side of said road beyond the limits prescribed in said charter, as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four. And that twenty-five miles of said main line between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the first day of January anno Domini eighteen hundred and seventy-two, and forty miles of the remaining portion thereof each

year thereafter, until the whole shall be completed between said points; provided, that all lands hereby granted to said company which shall not be sold or disposed of or remain subject to the mortgage by this act authorized, at the expiration of five years after the completion of the entire road, shall be subject to settlement and pre-emption like other lands at a price to be paid to said company not exceeding two dollars and fifty cents per acre; and if the mortgage hereby authorized shall at any time be enforced
53 by foreclosure or other legal proceedings, or the mortgaged lands hereby granted, or any of them be sold by the trustees to whom such mortgage may be executed, either at its maturity or for any failure or default of said company under the terms thereof, such lands shall be sold at public sale, at places within the States and Territories in which they shall be situated, after not less than sixty days' previous notice, in single sections or subdivisions thereof, to the highest and best bidder; provided, further, that in the construction of said railroad American iron and steel only shall be used, the same to be manufactured from American ore exclusively."

"SECTION 2. And be it further resolved, That Congress may at any time alter or amend this joint resolution, having due regard to the rights of said company and other parties."

V.

That thereafter said Northern Pacific Railroad Company proceeded with the work of surveying and definitely locating the line of its branch railroad, extending from Pasco Junction, a point on the main line of said railroad in the Territory (now State) of Washington, to Tacoma, in the Territory (now State) of Washington, a point on Puget sound, and, prior to March 26th, 1884, had so surveyed and definitely located said branch railroad, hereinafter for the purpose of convenience, designated as the Cascade branch, extending coterminous with and within forty miles of the northeast quarter of section nineteen, township twenty-seven north, range ten east, W. M., in the State of Washington, and on the 26th day of March, 1884, filed a plat of said portion of the definite location
54 of said Cascade branch, which said plat had theretofore been duly approved by the Secretary of the Interior in the office of the Commissioner of the General Land Office.

That, at the date of said grant to said Northern Pacific Railroad Company, and at the date of said joint resolution of May 31, 1870, and at the time the line of said Cascade branch of said Northern Pacific Railroad Company, coterminous with said described land, was definitely fixed and located and a plat thereof filed in the office of the Commissioner of the General Land Office, to wit, on March 26th, 1884, said land was public land to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights (except the claim and right of said Northern Pacific Railroad Company, if any it had by reason of the facts herein stipulated), unless the facts herein stipulated and acts of Congress passed prior to said 26th day of March,

1884, constituted a reservation, sale, grant, or appropriation otherwise, or created other claims or rights from which said land was not free at said date.

That after fixing the line of said Cascade branch coterminous with said land as aforesaid, the said Northern Pacific Railroad Company proceeded with the construction of its railroad and telegraph line on, over, and along said line of definite location; and, having constructed a section of over twenty-five consecutive miles of said railroad and telegraph line extending opposite to and coterminous with said land, the Northern Pacific Railroad Company so reported to the President of the United States, and thereupon the President of
55 the United States appointed three commissioners to examine said line of railroad and telegraph; and the said commissioners, having examined said constructed railroad and telegraph line extending opposite to and coterminous with the hereinbefore-described land, reported that the same had been constructed in a good, substantial, and workmanlike manner, and in all respects as required by said act of Congress; and thereupon, on, to wit, April 23, 1884, the President of the United States approved said report and accepted said railroad and telegraph line, and directed that patents for the odd-numbered sections of public lands, not mineral, coterminous therewith, should be issued, conveying the said lands to said Northern Pacific Railroad Company. That no patent has been issued to said Northern Pacific Railroad Company, or its successors, and the survey of said premises, or any part thereof, was not filed until eleventh day of April, 1899.

VI.

That the Northern Pacific Railway Company is a corporation organized, created, and existing under and by virtue of the laws of the State of Wisconsin, and is a citizen of the State of Wisconsin, and was not organized, nor is it a corporation, under the laws of the State of Washington.

VII.

That on or about the 31st day of August, 1896, the said Northern Pacific Railway Company, by virtue of certain deeds of conveyance, duly signed, executed, and delivered, became the successor in interest of said Northern Pacific Railroad Company, and became the owner
56 of all the property, of whatsoever kind, of said Northern Pacific Railroad Company, under and by virtue of foreclosure, sale, and confirmation of sale in that certain action in the above-named court wherein The Farmers' Loan and Trust Company was complainant, and the said Northern Pacific Railroad Company *et al.* were defendants.

VIII.

That the said Northern Pacific Railway Company now is, and ever since the 31st day of August, 1896, has been, continuously operating said railroad as a common carrier for the purpose of transporting passengers, freight, and the United States mails.

IX.

That the northeast quarter of section nineteen, township and range aforesaid, in which the claims sought to be patented by defendant Soderberg are included, is rough and mountainous land, and its principal value consists in the existence thereon of a ledge of granite running through said alleged claims, of a good and merchantable quality, valuable for building stone, which is capable of being, and subject to being, quarried, and is of the value of more than five thousand dollars.

That defendant, without permission or consent of complainant or its predecessor in interest, and against the will of complainant and its predecessor in interest, has quarried and removed from said premises and sold and disposed of large quantities of granite; that defendant claims to have entered upon said premises and property under and by virtue of certain acts and things hereinafter set forth,
and claims the same as mineral land, or as land valuable
57 chiefly for its building stone, and claims it is excepted from
the grant to the Northern Pacific Railroad Company by reason of its character; and claims the right to enter and patent the same as stone land under the acts of Congress relating thereto.

That on or about April 14th, 1897, defendant was a citizen of the United States and qualified to enter mineral land under the laws of the United States, and said land being at said time unsurveyed, the defendant, in accordance with the mining laws of the United States (if the stipulated facts herein show the lands to be excepted from said grant, or enterable under such laws) and regulations and rules of the mining district in which the lands in controversy are situated, did enter and locate portions of the land described in the bill of complaint herein, and under the laws and rules and regulations relating to placer mineral claims (if the stipulated facts herein show such to be so excepted or enterable), which portions of said land are described in the answer of the defendant herein as the "Lillie" and "Linea" mining claims; but this shall not be construed as an admission on the part of the complainant that defendant had any right to make the same on said lands, but only to admit that defendant was qualified to do, and did do, what the law authorized and required, if the land in controversy was subject to location and appropriation.

That defendant did, on or about the 16th day of April, 1897, cause a record of said location of said alleged mining claims to be filed and entered upon the public record of the mining district of the county of Snohomish, the county in which said lands and alleged
mineral claims were situated, as authorized and required by
58 the laws of the State of Washington and the United States,
which location contains the names of defendant, locator, date of location, together with such a description of the alleged claims, located by reference to some natural object or permanent monument, as to enable said alleged claims to be identified.

X.

That defendant entered upon said premises and developed the portions thereof claimed by him as stone claims, and expended in labor and improvements upon and developing each of said alleged claims more than five hundred dollars ($500.00).

XI.

That on or about the 5th day of October, 1898, defendant filed in the land office at Seattle, Washington, the same being the land office of the district in which the said land is located, an application to purchase said portions of said premises as defendants had undertaken to locate as mineral claims, and did then and there make oath before the register and receiver of said land office and file the same in said land office, showing compliance with the laws, rules, and regulations as to the location of placer claims, if the premises in controversy were subject to placer location; and filed in said office a plat and field-notes of the survey of said alleged claims, made under the direction of the United States surveyor general of the State of Washington, and showing accurately the boundaries of said alleged claims, and each of them, which were distinctly marked by monuments on the ground, and showing further that said alleged
59 claims would fall within the borders of the northeast quarter of section nineteen, township twenty-seven north, range ten east, W. M., when the public survey should be extended thereover; and did then and there, previous to the filing the said application, post in a conspicuous place on the alleged claims embraced therein a copy of said plat, together with a notice of said application for patent, which said plat and notice did then and there remain conspicuously posted on the said premises during the period of publication hereinafter mentioned; and defendant did then and there file in the said land office with his application an affidavit of two persons that such plat and the notice had been duly posted, and likewise filed at said time in said land office a copy of said notice so posted, and by such application he requested to be permitted to purchase said claims as mineral land, and he then and there undertook and offered to maintain by proof that the said claims were valuable only for the granite and building stone contained therein and thereon, and were mineral lands of the United States and subject to location under the laws, rules, and regulations pertaining to placer mineral claims; that defendant has done the required amount of work and labor and improvements thereon to entitle him to a patent if the said lands are mineral lands and subject to entry and patent under the laws of the United States to any person or corporation other than the Northern Pacific Railroad Company, its successors or assigns; that said application, affidavit, notice, plat, and field-notes being filed as aforesaid
and entered of record in said United States land office, the
60 register and receiver of said land office set for hearing the said application, and notice of said application and hearing was given and published by the register for period of sixty days in a newspaper published in the vicinity of said alleged claims, desig-

nated for that purpose; and the said register did also post said notice in his office for the same period, which said purported entry, application, affidavits, notice, plat, and field-notes were in all respects formal and according to law; and defendant filed at said time with his said application the certificate of the United States surveyor general that over five hundred dollars' ($500.00) worth of labor had been expended or improvements made upon each of the said alleged claims by the defendant, and which said plat, so filed, was correct and contained such further description, by reference to natural objects and permanent monuments, as surveyed, to identify the said alleged claims, and each of them, and furnish an accurate description to be incorporated in the patent if issued; and at the expiration of said sixty days of publication said defendant filed an affidavit in said land office showing that said plat and notice aforesaid had been posted in a conspicuous place on the said alleged claims, and had remained and been kept so posted during said period of publication.

XII.

That no protest or adverse claim was filed with the register or receiver, or either of them, of said land office within the said period of sixty days, or at any other time, or at all, by any person or persons whomsoever.

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XIII.

That defendant has complied with all the rules and regulations of the Land Department of the United States, and made the proof as hereinbefore set forth, and it was assumed and decided by the Land Department of the United States, upon such *ex parte* proceedings, that the defendant was entitled to a patent, upon payment of the proper fees and the price per acre for said land, and further held that no adverse claim has been filed or existed.

That defendant has paid all fees required in said land office and paid the Government price per acre for said land, and on the 20th day of December, 1898, received from the register and receiver of the land office at Seattle their receiver's receipt, showing the said sum to be in payment in full for the area embraced in the alleged mining claims known as the "Lillie" and "Linea," which claims are fully and particularly described in the answer of the defendant herein in this action, and which said proof and records were duly transmitted to the Land Department of the United States, Washington, D. C., with the recommendation of the register and receiver that patent be issued in due form to the defendant for the said portions of the tract in controversy embraced in the description of the alleged mineral claims, and which patent if not already issued, will issue in due course of time, and as soon as the officers of the Land Department can, in the regular course of business, issue the same.

XIV.

62 That the Government survey of the lands in the township, including the lands in the controversy herein, was filed in the local land office at Seattle, Washington, on April 11,

1899, but no survey of the said premises had theretofore been filed in said land office or elsewhere.

Dated this 20th day of September, 1899.

STEPHENS & BUNN,
Solicitors and Attorneys for Complainant.
BALLINGER, RONALD & BATTLE,
Solicitors and Attorneys for Defendants.

(Endorsed:) Stipulation. Filed in the United States circuit court, district of Washington, Sep. 30, 1899. A. Reeves Ayres, clerk. H. M. Walthew, dep.

In the Circuit Court of the United States, District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant, *vs.* J. A. SODERBERG, Defendant. } Filed February 8, 1900.

Opinion.

Suit in equity for an injunction, and to determine adverse claims of title to part of an odd-numbered section of land situated in the State of Washington, and within 40 miles from the completed
63 part of the line of the Northern Pacific railroad. The Northern Pacific Railway Company, successor of the Northern Pacific Railroad Company, claiming the same as a part of the land granted by the act of Congress of July 2, 1864, to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound (13 U. S. Stat. 365), and the defendant, J. A. Soderberg, who, when the suit was commenced, was in possession of said land, and engaged in quarrying and disposing of merchantable granite, claiming title to the land and a right to remove stone therefrom, under proceedings commenced by him to acquire the title from the United States as a placer mining claim, pursuant to the act of Congress of August 4, 1892, entitled "An act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws" 2 Supp. U. S. R. S.) Decree for defendant.

H. M. Stephens, for complainant.
Ballinger, Ronald and Battle, for defendent.

HANFORD, *District Judge:*

The land which is the subject of this suit contains a large and valuable ledge of granite; it is situated in the Cascade mountains, and is apparently of no value except for the granite. There is no controversy between the parties as to any material fact, and their rights with respect to the land depend entirely upon the determination of the question whether granite is a "mineral" within the definition of that word as it is used in the act of Congress granting lands to aid in the construction of the Northern Pacific railroad. The de-

fendant has perfected his right to the land, if a title can be
64 lawfully acquired to part of an odd-numbered section which is valuable chiefly for stone, and situated within the limits of the Northern Pacific Railroad Company's grant. The Land Department has decided the question in favor of the defendant, and issued a patent to him.

In the month of April, 1895, this court, at a term held at Spokane, decided the question the other way, in the case of Northern Pacific Railroad Company *vs.* Stanton. At that time the court did not have an opportunity to study the question as thoroughly as it appears to have been studied by the counsel who have argued this case, no opinion was prepared, and the considerations upon which the decision was based have not been publicly set forth; therefore, to justify a departure from a precedent, it is proper at this time to say the court then considered that the act of Congress of June 3, 1878, authorizing the sale of lands chiefly valuable for stone, on the same terms as timber lands (1 Supp. U. S. R. S. 2d ed. 187), and the act of August 4, 1892, authorizing the entry of lands chiefly valuable for building stone under the placer mining laws (2 Supp. U. S. R. S. 65) placed stone lands in a class separate and distinct from other mineral lands, and justified an inference that the word "mineral," as used in prior acts, was understood and intended by the legislative branch of the Government as having a limited definition including only metal-iferous minerals. The second section of the act of 1892 extends the act of 1878 to all the public-land States, so there can be no presumption that it repeals the act of 1878 by implication. The court, as then informed, supposed that its decision in the Stanton case was in harmony with the rule at
65 that time prevailing in the Land Department. (See Conlin *vs.* Kelley, 12 Land Decisions, 1; Clark *vs.* Ervin, 16 Land Decisions, 122; Hayden *vs.* Jamison, 16 Land Decisions, 537; South Dakota *vs.* Vermont Stone Co., 16 Land Decisions, 263; Florence *vs.* Delaney, 17 Land Decisions, 120; Tucker *vs.* Florida R. & M. Co., 19 Land Decisions, 414.) In the presentation of this case the attorneys on both sides have made oral and written arguments supporting their respective contentions with great force and much learning, and after considering the same with deliberation, I am fairly convinced that the reasons controlling the decision in the Stanton case are insufficient, and it appears also that the practice in the Land Department is now governed by a different rule, as shown by the action of the department in issuing a patent to the defendant for the land which is the subject of controversy in this case. In its common and ordinary signification the word "mineral" is not a synonym for "metal," but is a comprehensive term including every description of stone and rock deposits, whether containing metallic substances or entirely non-metallic. Congress having chosen a word of such broad significance to define the class of lands reserved from the grant to the Northern Pacific railroad, the courts and the Land Department have no authority to construe the act, giving a narrow or limited definition to the word, in order to enhance the value of the grant and to diminish the rights of the general public in the lands

reserved, unless the act itself or other acts of Congress prescribe conditions which require an interpretation of the statute, allowing the word to have force only in a restricted sense. The granting act itself does not expressly or by implication so prescribe otherwise than by making an exception of coal and iron. Looking, then, for other acts of Congress which might be regarded as giving a legislative construction to the granting act, I find only one which indicates a purpose to give a legislative definition to the word "mineral" as it is there used; that is the act of February 26, 1895, to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho, 2 Supp. U. S. R. S. 385; this statute provides for a commission to examine and classify the odd-numbered sections of land within the limits of the Northern Pacific Company's grant in the States of Montana and Idaho, and the 3d section reads as follows:

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"That all said lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration, occupation, and purchase under the provisions of the United States mining laws, and the commissioners in making the classification hereinafter provided for shall take into consideration the mineral discovered or developed on or adjacent to such land, and the geological formation of all lands to be examined and classified, or the lands adjacent thereto, and the reasonable probability of such land containing valuable mineral deposits because of its said formation, location, or character. * * * Provided, that the word 'mineral' where it appears in this act, shall not be held to include iron or coal."

If Congress had intended by this act to interpret the reservation clause of the granting act, so as to give a restricted definition to the word "mineral," there is no good reason why it should not have directed that only lands valuable for the metalliferous minerals therein should be classified as mineral lands, and it is significant that instead of prescribing any such limited rule, the words of the act correspond with the words in the grant expressing the purpose to reserve all minerals, the test being not the nature or quality of the mineral, but its value, and lands containing any mineral deposits of sufficient value to be subject to sale by the Government under the provisions of the United States mining laws, are required to be classified so as to come within the class of lands which are reserved. This statute must be understood as referring to the United States mining laws in force at the time of its enactment, including the act of August 4, 1892, by which lands "that are chiefly valuable for building stone" were made subject to entry under the provisions of the law in relation to placer mineral claims. It may be conceded that Congress could not, after the granted lands had been earned, by any form of enactment withdraw any part not in fact originally reserved, and the court is not at all inclined to give any such effect to the act of 1895. But the complainant in this case contends for an interpretation of the granting act in accordance with a supposed particular legislative intent which is not expressed by the words of the statute according to the definitions found in the dictionaries, and in prosecuting an inquiry

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as to the intent of the legislature it is not improper to give due consideration and weight to the repeated and harmonious expressions found in the statutes. It is not to be presumed that the intention or purpose of Congress with respect to what lands should be
68 granted and what reserved was changed between the time of making the grant and the enactment of the law providing for the classification of the lands within the limits of the grant in the States of Montana and Idaho, when no such change of intention or purpose is declared; on the other hand, it is fair to presume that the intention of Congress was the same with respect to mineral lands reserved from the grant in other States, that is expressly declared with reference to lands in Montana and Idaho.

On the part of the complainant it has been argued that prior to August 4, 1892, lands valuable for the deposits of stone contained therein were not regarded by Congress as mineral lands, else Congress would not have enacted the law of June 3, 1878, providing for the sale of such lands on the same terms as timber lands, nor have enacted a law specially providing for the entry of lands chiefly valuable for building stone under the laws providing for the disposition of placer mineral lands, and it must be admitted that this argument is supported by the decision of the circuit court of appeals for the ninth circuit, in the case of McFadden *vs.* Mountain View Min. & Mill. Co., 97 Fed. Rep. 670. I should not feel at liberty to disregard a decision of the appellate court, if the case under consideration necessarily had to turn upon the same point, but whilst it is true that the act of 1892 only prescribes a rule for the future, and therefore may not be treated as being declaratory of the previously existing law, still it does not follow as a logical deduction that lands chiefly valuable for the ledges and deposits of stone therein had been theretofore considered by Congress as non-mineral. If a new statute should be passed, providing a particular method of acquiring title to lands con-
69 taining valuable deposits of nickel or zinc, and also providing that the same character of lands may be entered under the general mining laws of the United States, thus giving to purchasers an option to acquire the title by either method, it would be just as reasonable to say that by implication the new law had added something to the list of recognized minerals, as to suppose that the act of 1892 had the effect to place stone for the first time in the list of minerals. On the part of the defendant, an argument has been made that because there was apparent confusion in the practice of the Land Department growing out of contradictory rulings with reference to stone lands, the act of 1892 was intended to avoid the consequences of certain decisions which class stone as non-mineral, and, therefore, it must be inferred that the act was intended to restore stone lands to classification of mineral lands, in harmony with the general policy of the Government. I do not rest my decision upon that inference. I hold that it does not clearly appear from all or any declarations of the legislative will that the word "mineral" in the grant to the Northern Pacific railroad was there used in a restricted sense, and the rules for construing statutes making grants

require that effect be given to the whole act, including the reservation clause, according to the common and general definition of the words selected by Congress.

Decree for the defendant.

C. H. HANFORD, *Judge.*

(Endorsed:) Opinion. Filed Feb'y 8, 1900. A. Reeves Ayres, clerk. By A. N. Moore, deputy.

70 In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), Complainant, *vs.* J. A. SODERBERG, Defendant. } No. 719.

Order to File Mineral Certificate.

It appearing to the court that counsel herein for the respective parties have stipulated since the submission of said cause that the solicitors for defendant may present to this court the mineral certificate No. 133 issued by the United States to J. A. Soderberg for the mining claims in controversy herein, it is, therefore, ordered that the defendant may file herein said mineral certificate, or a copy thereof, as a part of the record herein.

Dated this 19th day of February, A. D. 1900.

Enter.

C. H. HANFORD, *Judge.*

(Endorsed:) Order to file mineral certificate. Filed in the United States circuit court, district of Washington. Feb. 19, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep.

71 DEFENDANTS' EXHIBIT No. 1—MINERAL CERTIFICATE.

General Land Office No., 31803. Mineral certificate No. 133.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the plat and field-notes of survey and the certificate No. 133 of the register of the land office at Seattle, in the State of Washington, accompanied by other evidence, whereby it appears that John A. Soderberg did, on the twentieth day of December, A. D. 1898, duly enter and pay for that certain placer mining claim and premises, designated by the surveyor general as lot No. 415, known as the Linea and Lillie placer mining claims, embracing a portion of section nineteen, in township twenty-seven north of range ten east, Willamette meridian, in the Index mining district, in the county of

Snohomish, and State of Washington, in the district of lands subject to sale at Seattle and bounded, and described, and platted as follows, with magnetic variation as hereinafter stated:

Beginning, for the description of the Linea placer claim, at corner No. 1, a granite cliff in place, twelve feet above ground, chiseled 1–415, with a cross (X) at corner point situate on the west side of a canyon, from which a hemlock, thirty inches in diameter, blazed, and marked B. T. 1–415, bears north twenty-three degrees and fifty-
six minutes east, fifty-eight and eighty-four-hundredths feet
72 distant; a maple thirty inches in diameter, blazed and marked B. T. 1–415, bears north seventy-three degrees and nineteen minutes east, eight and sixty-four-hundredths feet distant; the corner common to sections thirteen and twenty-four, in township twenty-seven north of range nine east, and sections eighteen and nineteen, in township twenty-seven north of range ten east, Willamette meridian, bears north seventy-seven degrees and fifty-nine minutes west, two thousand four hundred and thirty-eight and eight-tenths feet distant, and the corner common to said sections eighteen and nineteen and seventeen and twenty, said township twenty-seven north of range ten east, Willamette meridian, bears north eighty degrees nineteen minutes and thirty seconds east, two thousand nine hundred and eighty-one and eight-tenths feet distant.

Thence, first course, magnetic variation twenty-two degrees and fifty minutes east, north seventy-three degrees and twenty minutes east, forty-eight feet, creek; six hundred feet to corner No. 2.

Thence second course, magnetic variation, twenty-three degrees and fifteen minutes east, south twelve degrees and thirty-eight minutes east, one thousand and thirty-eight feet to corner No. 3, from which discovery point bears north sixty degrees and thirty minutes west, four hundred and forty-seven and seven-tenths feet distant.

Thence, third course, magnetic variation, twenty-three degrees and twelve minutes east, south seventy-three degrees and twenty minutes west, six hundred feet to corner No. 4.

Thence, fourth course, magnetic variation twenty-three
73 degrees east, north twelve degrees and thirty-eight minutes west, one thousand and thirty-eight feet to corner No. 1, the place of beginning.

Beginning, for the description of the Lillie placer claim, at corner No. 1, a granite rock in place 8 x 4 inches, two feet above ground, chiseled with 2 1–415 with cross at corner point with mound of stone, identical with corner No. 2 of said Linea placer claim, from which a hemlock, twelve inches in diameter, blazed and marked B. T. 2 1–415, bears south forty-one degrees and thirty-seven minutes east, eighteen and twenty-six-hundredths feet distant; a fir, ten inches in diameter, blazed and marked B. T. 2 1–415, bears south eighty-nine degrees and forty-nine minutes west, ten and thirty-two-hundredths feet distant; the corner common to said sections thirteen and twenty-four, eighteen and nineteen, bears north eighty-three degrees thirty-one minutes and forty-five seconds west, two thousand nine hundred and seventy-nine and one-tenth feet distant, and the corner common to said sections seventeen, eighteen, nineteen, and

twenty bears north eighty-two degrees four minutes and thirty seconds east two thousand three hundred and eighty-seven and four-tenths feet distant.

Thence, first course, magnetic variation, twenty-three degrees and fifteen minutes east, south seventy-six degrees and thirty-four minutes east, four hundred and forty-seven feet to witness corner to corner No. 2, a granite rock in place chiseled W. C. 2–415, with a cross (X) at corner point, with mound of rock, six hundred feet to corner No. 2, inaccessible.

74 Thence, second course, magnetic variation, twenty-three degrees and twenty minutes east, south twelve degrees and thirty-eight minutes east, two hundred and thirty-five and one-tenth feet to witness corner to corner No. 2, one thousand and thirty-eight feet to corner No. 3.

Thence, third course, magnetic variation, twenty-three degrees and ten minutes east, north seventy-six degrees and thirty-four minutes west, two hundred and twenty feet right bank of Skykomish river, six hundred feet to corner No. 4, identical with corner No. 3 of said Linea placer claim.

Thence, fourth course, north twelve degrees and thirty-eight minutes west, one thousand and thirty-eight feet to corner No. 1, the place of beginning.

Said lot No. 415 containing twenty-seven acres and one hundred and five thousandths of an acre of land, more or less.

Now know ye, that there is, therefore, hereby granted by the United States unto the said John A. Soderberg, and to his heirs and assigns, the said placer mining premises heretofore described.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said grantee above named, and to his heirs and assigns forever; subject nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted in its exterior limits to the boundaries of the said mining premises, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, which

75 may have been discovered within said limits subsequent to and which were not known to exist on the fifth day of October, A. D. one thousand eight hundred and ninety-eight.

Second. That should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits be claimed or known to exist within the above-described premises at said last-named date, the same is expressly excepted and excluded from these presents.

Third: That the premises hereby conveyed may be entered by the proprietor of any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, for the purpose of extracting and removing the ore from such vein or lode, should the same, or any part thereof, be found to penetrate, intersect, pass through or dip into the mining ground or premises hereby granted.

Fourth. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

Fifth. That in the absence of necessary legislation by Congress, the legislature of Washington may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to complete development thereof.

76 In testimony whereof, I, William McKinley, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the sixteenth day of November, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth.

By the President:

WILLIAM McKINLEY,
By F. M. McKEAN, *Secretary.*

C. M. BUSH,
Recorder of the General Land Office.

(United States General Land Office.)

E. G. E. Recorded vol. 284, pages 177 to 180, inclusive.

(Endorsed:) Defendant's Exhibit No. 1. Filed in the United States circuit court, district of Washington, Feb. 19, 1900. A. Reeves Ayres, clerk. R. M. Hopkins, dep.

77 In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), Complainant, *vs.* J. A. SODERBERG, Defendant. } No. 719.

Decree.

This cause coming on to be heard at this term upon the amended bill of complaint herein, the amended answer of the defendant thereto, the replication of complainant to such answer, and upon the written stipulation of the respective parties covering the facts and proofs herein, and the patent hereinafter mentioned submitted upon further stipulation of the respective parties, and upon consideration

thereof, it is found and hereby ordered, adjudged, and decreed that the defendant, J. A. Soderberg, is the owner of those certain placer mining claims known as the "Linea" and "Lillie," embracing a portion of section 19, in township 27 north of range 10 east, Willamette meridian, in the Index mining district, in the county of Snohomish, State of Washington, and in the district of lands subject to sale at Seattle, and bounded, described, and platted as
78 more specifically described in the United States patent issued November 16th, 1899, to said Soderberg, being mineral certificate No. 13[illegible], and recorded in the General Land Office in volume 284, pages 177 to 180, inclusive.

And it is further ordered, adjudged, and decreed that the title of J. A. Soderberg in and to said mining claims be, and the same is hereby, quieted and confirmed in him.

And it is further ordered, adjudged, and decreed that the bond heretofore given by the said J. A. Soderberg in this cause, in the penal sum of five thousand ($5,000) dollars, for the faithful fulfillment or payment of any decree that might be awarded in behalf of complainant, be, and the same is hereby, canceled and held for naught.

And it is further ordered, adjudged, and decreed that the said defendant, J. A. Soderberg, do recover of the plaintiff his costs, charges, and disbursements herein incurred to be taxed.

Dated this 24th day of February, A. D. 1900.

Enter.

C. H. HANFORD, *Judge.*

(Endorsed:) Decree. Filed in the United States circuit court, district of Washington, Feb. 24, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep.

79 In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), Complainant, vs. J. A. SODERBERG, Defendant.	No. 719.

Amended Decree.

This cause coming on to be heard at this term upon the amended bill of complaint herein, the amended answer of the defendant thereto, the replication of complainant to such answer, and upon the written stipulation of the respective parties covering the facts and proofs herein, and the patent hereinafter mentioned submitted upon further stipulation of the respective parties, and upon consideration thereof, it is found and hereby ordered, adjudged, and decreed that the defendant, J. A. Soderberg, is the owner of those certain placer mining claims known as the "Linea" and "Lillie," embracing a portion of section 19 in township 27 north of range 10 east, Willamette meridian, in the Index mining district in the county of

Snohomish, State of Washington, and in the district of lands
80 subject to sale at Seattle, and bounded, described, and platted as more specifically described in the United States patent issued November 16th, 1899, to the said Soderberg, being mineral certificate No. 133, and recorded in the General Land Office in volume 284, pages 177 to 180, inclusive.

And it is further ordered, adjudged, and decreed that the title of J. A. Soderberg in and to said mining claims be, and the same is hereby, quieted and confirmed in him.

And it is further ordered, adjudged and decreed that the bond heretofore given by the said J. A. Soderberg in this cause, in the penal sum of five thousand ($5,000) dollars for the faithful fulfillment or payment of any decree that might be awarded in behalf of complainant be, and the same is hereby, canceled and held for naught.

It is further ordered, adjudged and decreed that the said defendant, J. A. Soderberg, do recover of the plaintiff his costs, charges, and disbursements herein incurred to be taxed.

And it is further ordered, adjudged, and decreed that complainant's bill of complaint herein be, and the same hereby is, dismissed, and that respodent recover his costs herein incurred to be taxed.

Dated this 8th day of March, 1900.

Enter.

C. H. HANFORD, *Judge.*

(Endorsed:) Amended decree. Filed in the United States circuit court, district of Washington, March 8, 1900. A Reeves Ayres, clerk. H. M. Walthew, dep.

81 In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Respondent.

Petition for Appeal and Order Allowing Same.

The above-named complainant and appellant, The Northern Pacific Railway Company, conceiving itself aggrieved by the order and decree made and entered in the above-named court in the above-entitled cause on the 24th day of February, 1900, and the amended decree entered on March 8, 1900, wherein and whereby it was ordered, adjudged, and decreed as follows—

"It is found and hereby ordered, adjudged, and decreed that the defendant, J. A. Soderberg, is the owner of those certain placer mining claims known as the 'Linea' and 'Lillie,' embracing a portion of section 19, in township 27 north of range 10 east, Willamette meridian, in the Index mining district, in the county of Snohomish, State of Washington, and in the district of lands subject to sale
82 at Seattle, and bounded, described, and platted as more specifically described in the United States patent issued Novem-

ber 16th, 1899, to said Soderberg, being mineral certificate No. 133, and recorded in the General Land Office in volume 284, pages 177 to 180, inclusive.

"And it is further ordered, adjudged, and decreed that the title of J. A. Soderberg in and to said mining claims be, and the same is hereby, quieted and confirmed in him.

"And it is further ordered, adjudged, and decreed that the bond heretofore given by the said J. A. Soderberg in this cause, in the penal sum of five thousand ($5,000) dollars for the faithful fulfillment or payment of any decree that might be awarded in behalf of complainant, be, and the same is hereby, canceled and held for naught.

"And it is further ordered, adjudged, and decreed that the said defendant, J. A. Soderberg, do recover of the plaintiff his costs, charges, and disbursements herein incurred to be taxed.

"And it is further ordered, adjudged, and decreed that complainant's bill of complaint herein be, and the same hereby is, dismissed, and that respondent recover his costs herein incurred to be taxed"—

does hereby appeal from said orders and decrees, and the whole and every part thereof, to the United States court of appeals for the ninth judicial circuit, for the reasons specified and set forth in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings,
and papers upon which said orders and decrees were made,
83 duly authenticated, may be sent to the United States circuit court of appeals for the ninth circuit.

STEPHENS & BUNN,
Solicitors for the Complainant and Appellant,
Northern Pacific Railway Company.

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done in open court this 19th day of March, 1900.

C. H. HANFORD,
District Judge and One of the Judges of said United States Circuit Court, Presiding Therein.

Due service of within petition, by receipt of a true copy thereof, admitted this 19th day of March, 1900.

BALLINGER, RONALD & BATTLE,
Attorney- for Defendant.

(Endorsed:) Petition for an appeal and order allowing appeal. Filed in the United States circuit court, district of Washington. Mar. 19, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep.

84 In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Respondent. } No. 719.

Assignment of Errors.

Comes now the above-named complainant and appellant, The Northern Pacific Railway Company, successor in interest of the Northern Pacific Railroad Company, and makes and files the following assignment of errors upon which it will rely in its appeal from the orders and decrees of the court made herein on the 24th day of February, and March 8, 1900, as follows, to wit:

I.

The court erred in not making, rendering, and entering decree in favor of complainant and appellant, The Northern Pacific Railway Company, and against the defendant and respondent, J. A. Soderberg, and in not granting an injunction restraining said respondent from in any manner interfering with the property described
85 in the amended bill of complaint, or taking granite therefrom without the consent of appellant.

II.

The court erred in not holding and deciding and decreeing that complainant and appellant is the owner of the property described in the amended bill of complaint.

III.

The court erred in not granting an injunction restraining respondent from committing waste or trespass upon the land described in the amended bill of complaint and owned by appellant.

IV.

The court erred in holding that defendant and respondent, J. A. Soderberg, is the owner of the alleged placer mining claims known as the "Linea" and "Lillie," and embracing a part of section nineteen, township twenty-seven north of range ten east of the Willamette meridian, and the said order and decree is erroneous in so holding and decreeing said Soderberg to be such owner.

V.

The court erred in holding said Soderberg is entitled to have the title to said alleged mineral claims quieted and confirmed in him, and the said order and decree are erroneous in ordering, adjudging, and decreeing the title of said mineral claims, or either of them, or any part of either of them, quieted and confirmed in said Soderberg.

VI.

The court erred in holding that the bond given by the de-
86 fendant and respondent, Soderberg, in the sum of five thou-
sand dollars, to secure the performance of the decree and the observance of the provisional injunction, *to* be canceled and discharged; and said decree is erroneous in ordering and decreeing said bon dcanceled and for naught held.

VII.

The court erred in holding and adjudging defendant and respondent Soderberg entitled to recover costs in this cause, and said decree is erroneous in adjudging and decreeing said defendant and respondent, Soderberg, should recover of complainant and appellant costs, charges, and disbursements in this cause.

VIII.

That the decree herein is erroneous in holding, determining, finding, or adjudging that the land involved herein is "mineral land" within the meaning of an act of Congress of the United States, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's sound, on the Pacific coast, by the northern route," approved July 2d, 1864.

IX.

That the decree is erroneous in holding, ordering, adjudging, or decreeing that the lands described in complainant's and appellant's amended bill of complaint herein, or any part thereof, to wit, an odd-numbered section within less than forty miles of the line of definite location and construction of the railroad of the Northern
Pacific Railroad Company, a corporation under the laws of
87 Congress, were subject to entry or acquisition as stone land
or as a placer mineral claim, or subject to entry or location in any manner whatever.

X.

The court erred in dismissing the bill of complaint of complainant, and the decree is erroneous in so ordering and adjudging.

Wherefore, the complainant and appellant, The Northern Pacific Railway Company, successor in interest of the Northern Pacific Railroad Company, prays that the said order and decree of the circuit court of the United States, ninth circuit, district of Washington, northern division, be reversed, and that the said circuit court be directed to render and enter decree in favor of complainant and appellant and against defendant and respondent, in accordance with the prayer for this appeal and the prayer of the amended bill of complaint in this cause.

STEPHENS & BUNN,
Solicitors for Complainant and Appellant, Northern Pacific Railway Company.

Due service of within assignment of errors, by receipt of a true copy thereof, admitted this 19th day of March, 1900.

BALLINGER, RONALD & BATTLE,
Attorneys for Defendant.

(Endorsed:) Assignment of errors. Filed in the United States circuit court, district of Washington, Mar. 19, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep.

88 In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Respondent. } No. 719.

Order Fixing Amount of Appeal Bond.

The complainant and appellant, The Northern Pacific Railway Company, successor in interest of the Northern Pacific Railroad Company, having this day filed its petition for an appeal from the orders and decrees made, rendered, and entered herein on the 24th day of February and 8th day of March, 1900, to the United States circuit court of appeals, in and for the ninth judicial circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of bond and security which complainant and appellant should give and furnish on said appeal, and said petition and appeal having this day been allowed.

Now, therefore, it is ordered that the appeal bond herein be, and it is hereby, fixed at the sum of $500.00, conditioned and to the effect that the said company shall prosecute its said appeal to
89 effect, and shall answer all damages and costs that may be awarded against it if it fail to make its plea and appeal good. Said bond and security to be approved by the above-named court or judge presiding therein.

Done in open court this 19th day of March, 1900.

C. H. HANFORD,
District Judge and One of the Judges of the said United States Circuit Court, Presiding Therein.

O K.
B., R. & B.

(Endorsed:) Order. Filed in the United States circuit court, district of Washington, Mar. 19, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep.

In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Respondent.
} No. 719.

Bond on Appeal.

Know all men by these presents, that we, the Northern Pacific Railway Company, a corporation, as principal, and Jacob
90 Furth and R. V. Ankeny, as sureties, are held and firmly bound unto J. A. Soderberg in the full and just sum of $500.00, to be paid to said J. A. Soderberg, his attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 19th day of March, in the year of our Lord one thousand nine hundred.

Whereas, lately at a session of the circuit court of the United States for the district of Washington, northern division, in a suit pending in said court between the said Northern Pacific Railway Company, complainant and appellant, and J. A. Soderberg, defendant and respondent, a decree was rendered against the said Northern Pacific Railway Company, and the said Northern Pacific Railway Company having obtained from said court an order allowing an appeal to the United States circuit court of appeals to reverse the decree of the aforesaid suit, and a citation, directed to the said J. A. Soderberg, is about to be issued, citing and admonishing him to be and appear at the United States circuit court of appeals, for the ninth circuit, to be holden at San Francisco, California;

Now, the condition of the above obligation is such that if the said Northern Pacific Railway Company shall prosecute its said appeal to effect, and shall answer all damages and costs that may
91 be awarded against it, if it fails to make its plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

NORTHERN PACIFIC RAILWAY COMPANY,
By STEPHENS & BUNN, [SEAL.]
Its Solicitors.
JACOB FURTH. [SEAL.]
R. V. ANKNEY. [SEAL.]

STATE OF WASHINGTON,
County of King, } *ss:*

Jacob Furth and R. V. Ankeny, being first duly sworn, on oath, each for himself and not one for the other, deposes and says that he is a resident and freeholder in the district of Washington, and that

he is worth the sum mentioned in the foregoing bond and obligation over and above all just debts and liabilities and exclusive of property exempt from execution, in property situated in the State of Washington.

That he is not an officer of the above court or an attorney-at-law.

JACOB FURTH.
R. V. ANKENY.

Subscribed and sworn to before me this 19th day of March, 1900.

[NOTARIAL SEAL.] H. J. RAMSEY,
Notary Public in and for the State of Washington,
Residing at Seattle, Washington.

92 The foregoing bond and sureties therein and thereby offered are hereby approved this 19th day of March, 1900.

C. H. HANFORD,
District Judge and One of the Judges of the said Circuit Court, Presiding Therein.

Due service of within, by receipt of a true copy thereof, admitted this 19th day of March, 1900.

BALLINGER, RONALD & BATTLE,
Attorneys for Defendant.

(Endorsed:) Bond on appeal. Filed in the United States circuit court, district of Washington, March 19, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep.

UNITED STATES OF AMERICA, ss:

Citation.

(Copy.)

To J. A. Soderberg, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the ninth circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an order allowing an appeal, entered and filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, in that certain suit or action numbered 719, wherein The Northern Pacific Railway Company, a corporation organized
93 and incorporated under the laws of the State of Wisconsin, is complainant and appellant, and you, the said J. A. Soderberg, are defendant, respondent, and appellee, to show cause, if any there be, why the order and decree rendered against the said complainant and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, this 19th day of

March, in the year of our Lord one thousand and nine hundred, and of our Independence the one hundred and twenty-fourth.

C. H. HANFORD,
United States District Judge for the District of Washington, Sitting as Judge of said Circuit Court of the United States for the Ninth Circuit, District of Washington.

Attest:
A. REEVES AYRES,
Clerk of said Circuit Court of the United States for the Ninth Circuit, District of Washington,
[SEAL.] By H. M. WALTHEW, *Deputy.*

Service of the foregoing citation and receipt of a copy thereof admitted at Seattle, Washington, this 19th day of March, 1900.

BALLINGER, RONALD & BATTLE,
Solicitors for said J. A. Soderberg, Defendant, Respondent, and Appellee.

94 (Endorsed:) Citation and admission of service. Filed in the United States circuit court, district of Washington, Mar. 19, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep.

In the Circuit Court of the United States in and for the Ninth Judicial Circuit, District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant.

Stipulation as to Making up of Record.

It is hereby stipulated and agreed by and between the complainant, Northern Pacific Railway Company, by its solicitors, and the defendant, J. A. Soderberg, by his solicitors, that the transcript of record on appeal to the United States circuit court of appeals for the ninth circuit in the above-entitled cause shall be made up of the following-named papers, which are, and constitute, all material matters on said appeal, to wit: Subpœna and return thereof, amended bill of complaint, amended answer to amended bill of com-
95 plaint, answer to cross-bill and counter-claim, replication, order allowing provisional injunction, order modifying injunction, stipulation as to facts, order allowing filing of patent, patent, opinion of the court upon final hearing, decree, amended decree, petition for appeal and order allowing appeal, assignment of errors, order fixing bond on appeal, bond on appeal, citation on appeal and proof of service thereof, and this stipulation.

Dated this 20th day of March, A. D. 1900.

STEPHENS & BUNN,
Solicitors for Complainant.
BALLINGER, RONALD & BATTLE,
Solicitors for Defendant.

(Endorsed:) Stipulation as to making up of record. Filed in the United States circuit court, district of Washington, Mar. 22, 1900. A. Reeves Ayres, clerk. A. N. Moore, dep.

96 In the Circuit Court of the United States for the District of Washington, Northern Division.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant,
vs.
J. A. SODERBERG, Defendant. } No. 719.

Clerk's Certificate to Transcript.

UNITED STATES OF AMERICA, *District of Washington,* } ss:

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify the foregoing seventy-seven (77) typewritten pages, numbered from one (1) to seventy-seven (77), inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled cause, as the same remains on file and of record in the office of the clerk of the circuit court of the United States for the district of Washington, at Seattle, in the northern division of said district, and that the same constitutes the transcript of the record on appeal in the above-entitled cause from said circuit court of the United States for the dis-

97 trict of Washington, to the United States circuit court of appeals for the ninth judicial circuit.

I further certify that I hereto annex and herewith transmit the original citation issued in said cause.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of $23.55, and that the same has been paid to me by Messrs. Stephens & Bunn, attorneys for complainant and appellant above named, Northern Pacific Railway Company.

In witness whereof, I have hereunto set my hand and the seal of said circuit court this April 2, 1900.

[SEAL.]

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington,
By R. M. HOPKINS, *Deputy Clerk.*

[Ten-cent U. S. int. rev. stamp, canceled.]

UNITED STATES OF AMERICA, ss:

Citation.

(Original.)

To J. A. Soderberg, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the ninth circuit, to be held at the city of San Francisco, in the State of California, within

thirty days from the date of this writ, pursuant to an order al-
98 lowing an appeal, entered and filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, in that certain suit or action numbered 719, wherein The Northern Pacific Railway Company, a corporation organized and incorporated under the laws of the State of Wisconsin, is complainant and appellant, and you, the said J. A. Soderberg, are defendant, respondent, and appellee, to show cause, if any there be, why the order and decree rendered against the said complainant and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, this 19th day of March, in the year of our Lord one thousand and nine hundred, and of our Independence the one hundred and twenty-fourth.

C. H. HANFORD,
United States District Judge for the District of Washington, Sitting as Judge of said Circuit Court of the United States for the Ninth Circuit, District of Washington.

Attest: A. REEVES AYRES,
Clerk of said Circuit Court of the United States for the Ninth Circuit, District of Washington,
[SEAL.] By H. M. WALTHEW, *Deputy.*

99 Service of the foregoing citation and receipt of a copy thereof admitted at Seattle, Washington, this 19th day of March, 1900.

BALLINGER, RONALD & BATTLE,
Solicitors for said J. A. Soderberg, Defendant, Respondent, and Appellee.

(Endorsed:) No. 719. In the circuit court of the United States, district of Washington, northern division. Northern Pacific Railway Co., complainant, *vs.* J. A. Soderberg, defendant. Citation and admission of service. Filed in the United States circuit court, district of Washington, Mar. 19, 1900. A. Reeves Ayres, clerk. H. M. Walthew, dep. Stephens & Bunn, Peyton block, Spokane, Wash., attorneys for complainant.

(Endorsed:) No. 601. In the United States circuit court of appeals for the ninth circuit. The Northern Pacific Railway Company (a corporation, etc.), appellant, *vs.* J. A. Soderberg, appellee. Transcript of record. Appeal from the circuit court of the United States for the district of Washington, northern division. Filed April 5, 1900. F. D. Monckton, clerk.

100 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, etc., Appellant,
vs.
J. A. SODERBERG, Appellee.
No. 601.

James B. Kerr, for the appellant; R. A. Ballinger, for the appellee.

Before Gilbert, Ross, and Morrow, circuit judges.

The Northern Pacific Railway Company appeals from a decree of the circuit court dismissing its bill in a suit brought to restrain J. A. Soderberg, the appellee, from removing granite from the northeast quarter of section 19, township 27 N., range 10 east, of the Willamette meridian, in the State of Washington. The bill alleges that the land in question is part of an odd-numbered section situated within the forty mile or place limits of the grant
101 to the Northern Pacific Railroad Company by act of Congress approved July 2, 1864, that the title to said land passed to the railroad company upon the definite location of its line of road, which title the appellant has acquired by purchase, that there is situated upon said premises a ledge of granite of good quality of the value of more than five thousand dollars, and that the defendant is engaged in quarrying and removing the same. The defendant answered alleging that the premises were excepted from the grant to the Northern Pacific Railroad Company, by reason of the fact that they contained granite valuable for building purposes, and alleged further that the defendant had made an entry of the premises under the mineral laws of the United States. The answer set forth an affirmative defense in the nature of a cross-bill, alleging the facts of the defendant's entry of the premises under the mineral laws of the United States, and praying that he be decreed to be the owner of the premises covered by his entry. The case was heard upon an agreed statement of facts, in which it was shown that the line of the railroad was definitely located opposite the premises in controversy on March 26, 1884, and that it was a portion of the main line over the Cascade mountains authorized by act of Congress of July 2, 1864, which, under the joint resolution of May 31, 1870, was designated the branch line; that at the date of the grant and at the date of the location of the road opposite the premises in controversy, the land was public land to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, unless the other facts stipulated and the acts of Congress passed previous to March 26, 1884, constituted a reservation
102 or appropriation; that the land in controversy is rough and mountainous land, and its principal value consists in the granite thereon, which is of good and merchantable quality, valuable for building stone, and of the value of more than five thousand dollars; that on April 14, 1897, the defendant entered certain por-

tions of said quarter section of land under the placer mining laws of the United States, and on April 26, 1897, he caused a record of the location of his claims to be filed and entered upon the public records of the mining district in which the land is situated. The stipulation sets forth further facts sufficient to show that the appellee acquired title to said mining claims under the mineral laws of the United States, provided that said lands were subject to entry under such mining laws.

GILBERT, circuit judge, after stating the case as above, delivered the opinion of the court:

The question presented in this case is whether land which is chiefly valuable for granite of a good, merchantable quality is mineral land within the meaning of the exception from the grant of lands to the Northern Pacific Railroad Company. Section 3 of the act of July 2, 1864, grants to the railroad company certain odd-numbered sections not mineral "and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office." There is a proviso that "all mineral lands" are excluded from the operations of the act, and in lieu thereof a
103 like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest to the line of said road may be selected. There is a further proviso "that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal." Section 2 of the act confers upon the railroad company power and authority to take from the public lands adjacent to the line of said road materials of earth, stone, timber, etc., for the construction thereof.

It is contended by the appellant that in all the congressional legislation relating to minerals and mineral lands prior to and including the grant to the Northern Pacific Railroad Company, the terms "mineral" and "mineral land" were used in their proper and ordinary sense, and were intended to embrace only such substances as were obtained from mines. Reference is made to the ordinance of May 20, 1785, for the disposal of lands in the western territory, in which there was reserved "one-third part of all gold, silver, lead, and copper mines, to be sold or otherwise disposed of, as Congress shall hereafter direct," and to acts of Congress in which lead mines and salines were reserved in the disposition of public lands, and especially to the act of September 4, 1841, the first general pre-emption law granting to settlers on public domain the right to purchase land to the extent of one hundred and sixty acres each, in which it was provided in section 10 that no lands on which are situated any known salines or mines should be allowed entry under the provisions of the act. We do not, however, discover from these earlier statutes any definite light as to the meaning of the word "mineral" as the same is used in the grant to the Northern Pacific Railroad Company. In the pre-emption act of 1841, the reser-

vation was of lands on which are situated any known "sa-
104 lines or mines." In the act of September 27, 1850, commonly known as the donation act, the exception is of "mineral lands" and lands reserved for salines. What is meant by the term "mineral lands" is not defined in the act, but the act contains provisions stating that portions of the public lands which seem unfit for cultivation purposes may be surveyed into townships only. Subsequently Congress by statute repealed so much of the donation act as provided that none except township lines shall be surveyed where the lands are mineral, thus applying the term "mineral" to lands which seem unfit for cultivation. So the act of March 3, 1853, directing the survey of public lands in California provided that "none other than township lines shall be surveyed where the lands are mineral." The act of July 1, 1864, 13 U. S. Stat., 343, enacted one day prior to the date of the grant to the Northern Pacific Railroad Company, has been regarded as a legislative interpretation of the words "mines" and "mineral lands," as they had been used by Congress in prior legislation, and more especially in the pre-emption act of 1841. The act declared that "any tracts embracing coal beds or coal fields, constituting portions of the public domain, and which as 'mines' are excluded from the pre-emption act of 1841, and which under past legislation are not liable to ordinary private entry," might be offered at public sale. This legislation expresses the meaning of Congress in reserving "mines" in the pre-emption act. It declares that mines of coal, which is not a metallic substance and had not been specified in the reservations of gold, silver, copper, lead, etc., had been included in the word "mines" in the reservation of the pre-emption act. Mullan *v.* United States, 118 U. S., 271.

105 Contemporaneous construction of the word "mineral" by the executive officers whose duty it was to construe the land laws is, in a case of ambiguity, of persuasive force. U. S. *v.* Moore, 95 U. S., 760. Brown *v.* U. S., 113 U. S., 568. Pennoyer *v.* McConnaughy, 140 U. S., 23. Barden *v.* N. P. R. R. Co., 154 U. S., 288. In the case of W. H. Hooper, 1 L. D., 560, the Land Department approved the rule which had been promulgated in a circular from the General Land Office that "Whatever is recognized as a mineral by the standard authorities on the subject, where the same is found in quantity and quality to render the land sought to be patented more valuable on this account than for purposes of agriculture, should be treated as coming within the purview of the mining act of May 10, 1872." In Maxwell *v.* Brierly, 1 B. L. P., 98, it was held that land more valuable for its deposits of stone or whatever is recognized as mineral than for agriculture, is mineral land. In the case of H. P. Bennet, Jr., 3 L. D., 116, it was held that mountain land covered with granite cliffs and rocks the value of which was in the quarry in the face of the cliff was mineral land, and might be entered as a placer claim. This ruling was adhered to until 1891, when an apparent departure was made in the case of Conlin *v.* Kelly, 12 L. D., 1, where it was held that stone useful only for general building purposes does not except land from pre-emption entry. In that case, Kelly, the pre-emptioner, had made final payment for the land seven

years before Conlin filed his contest claiming that the land was valuable for mineral. Decision seems to have been controlled by that fact, together with the further fact as found by the Secretary that the stone in the tract in controversy had no peculiar property or characteristic to give it special value otherwise
106 than for general building purposes. But in McGlenn *v.* Wienbroeer, 15 L. D., 370, it was held that land which contains a valuable deposit of stone useful for special purposes, might be entered as a placer claim. The Secretary distinguished the case of Kelly *v.* Conlin, and declared that the ruling in that case rested upon equitable as well as legal considerations, and that the department declined to cancel an entry which had existed for seven years upon the plea that it was fraudulently made, on the ground that common building rock used for general purposes is mineral. Shortly after the decision of the case of Kelly *v.* Conlin, and apparently for the purpose of disapproving the rule there announced, and of reestablishing the former ruling of the Land Department, Congress enacted the law of August 4, 1892, permitting stone to be taken under the placer mining laws. In a case arising before the date of that law, South Dakota *v.* Vermont Stone Co., 16 L. D., 263, it was held, following Kelly *v.* Conlin, that lands chiefly valuable for ordinary building stone are not excepted as mineral lands from the grant to the State for school purposes. But in Van Doren *v.* Plested, 16 L. D., 508, it was held that land containing a deposit of sandstone of a superior quality for building and ornamental purposes, valuable only as a stone quarry, may be entered as a placer claim under the general mining laws. This also was held of an entry made prior to the act of 1892. In the case of Paris Gibson, *et al.*, 21 L. D., 329, it was held that land embraced within a placer entry of a tract chiefly valuable for ordinary building stone made in 1889 is excepted from the subsequent operation of the grant of school lands to the State.

In that case the Secretary declined to approve the ruling in the
107 case of South Dakota *v.* The Vermont Stone Co. In Pacific Coast Marble Co. *v.* N. P. R. R. Co., *et al.*, 25 L. D., 233, it was held that lands valuable only on account of the marble deposit contained therein did not pass to the Northern Pacific Railroad Company under its grant of July 2, 1864, but were subject to placer entry under the mining laws.

These rulings of the Land Department are, in the main, in harmony with the definition of the word "mineral" as the same is popularly and generally accepted. A mineral is defined by the Century Dictionary to be, "Any constituent of the earth's crust; more specifically, an inorganic body occurring in nature, homogeneous and having a definite chemical composition which can be expressed by a chemical formula, and further having certain distinguishing physical characters." Bainbridge on Mines, 4th ed., p. 1, defining the term "mineral" says: "The term may, however, in the most enlarged sense, be described as comprising all the substances which now form or which once formed a part of the solid body of the earth, both external and internal, and which are now destitute of or incapable of supporting animal or vegetable life. In

this view, it would embrace as well the bare granities of the mountains as the deepest hidden diamonds and metallic ores." There is authority in the earlier English decisions for holding that minerals signify that which is obtained from mines, from underground workings, as distinguished from that which is quarried. Davvell *v.* Roper, 24 L. J. Ch., 779. Rex *v.* Sedgley, 2 B. & Ad., 65. King *v.* Brettell, 3 B. & Ad., 424. But the weight of English authority includes under the term "mineral" that which is quarried as well as that which is obtained from mines. In Midland R'y Co.,
108 *v.* Checkley, L. R. 4 Eq., 19, Lord Romilly, M. R., held that stone was a mineral under a reservation of mines and minerals. He said: "Stone is, in my opinion, clearly a mineral; and in fact everything except the mere surface, which is used for agricultural purposes; anything beyond that which is useful for any purpose whatever, whether it is gravel, marble, fireclay, or the like, comes within the word "mineral' when there is a reservation of the mines and minerals from a grant of land." In Earl of Rosse *v.* Wainman, 14 M. & W., 859, Parke, B., said: "Beds of stone, which may be dug by winning or quarrying, are therefore properly minerals." Similar views are expressed in Midland R'y *v.* Hanchwood B. & T. Co., L. R. 20. Ch. D., 552, Micklethwaite *v.* Winter, 5 Eng. L. & Eq., 526, Hext *v.* Gill, L. R. 7 Ch. App., 699, Jamieson *v.* North British R'y Co., 6 Scot. L. Rep., 188, and The Attorney General *v.* Welch Granite Co., 35 W. R., 617. In the case last cited, it was held that the term "mineral" included granite. In Pennsylvania the ruling in Earl of Rosse *v.* Wainman was followed in Griffin *v.* Fellows, *et al.*, 81 Pa. St., 114, where it was said: "The term 'mineral' embraces everything not of the mere surface which is used for agricultural purposes; the granite of the mountain as well as metallic ores and fossils are comprehended within it." In Hartwell *v.* Cammon, 10 N. J. Eq., 128, it was held that paint stone found in strata below the surface of the soil is included in the terms "mines" and "minerals." Under the authority of these decisions and definitions, we entertain no doubt that in the reservation of mineral lands from the grant to the Northern Pacific Railroad Company the granite quarry in controversy was included.

But if indeed the reservation of mineral lands as the term
109 "mineral" was used and understood at the time of the grant to the Northern Pacific Railroad Company was insufficient to exclude from the grant lands valuable principally for granite quarries, Congress nevertheless retained the power to subsequently enlarge the reservation and make it more comprehensive at any time before rights were vested by the definite location of the road. The grant was a grant of lands that were not otherwise reserved or appropriated at the time of the definite location of the line of the road. Menotti *v.* Dillon, 167 U. S., 703. N. P. R. R. Co. *v.* Sanders, 49, Fed., 129, 134. In the case last cited, this court said: "Although there was no statute providing for the sale or bestowal of mineral lands at the time of the grant to plaintiff, Congress had the right to and did afterwards make such a law, and under it claims could be and were lawfully initiated prior to the definite fixing of the line of plaintiff's

road. We think that the reservations in the plaintiff's grant were made in contemplation of future legislation as well as the then existing laws." Soon after making the grant, Congress enacted the first mining act. 14 Stat at Large, p. 251. The first section provides: "That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, etc." On May 10, 1872, it was enacted (17 Stat. at Large, p. 191), "That all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, etc." On June 3, 1878,
Congress enacted a law providing for the sale of lands valu-
110 able chiefly for timber or stone. 20 Stat. at Large, p. 89.
These statutes define the status of the mineral lands included within the territorial limits of the railroad grant at the time when the grant took effect, the date of the definite location of the road. The land in controversy was land valuable chiefly for stone, and as such was offered for sale.

The decree of the circuit court is affirmed.

(Endorsed:) "Opinion. Filed Oct. 1, 1900. F. D. Monckton, clerk."

111 United States Circuit Court of Appeals for the Ninth Circuit.

THE NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, etc., Appellant,
vs.
J. A. SODERBERG, Appellee. } No. 601.

Appeal from the circuit court of the United States for the district of Washington, northern division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Washington, northern division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, with costs.

(Endorsed:) Decree. Filed and entered October 1, 1900. F. D. Monckton, clerk.

112 United States Circuit Court of Appeals for the Ninth Circuit.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Appellee.

Petition for Appeal.

Now comes The Northern Pacific Railway Company, a corporation, appellant in the above-entitled cause, and conceiving itself aggrieved by the decree affirming the decree of the circuit court made and entered in the above-entitled cause on the 1st day of October, 1900, by the United States circuit court of appeals for the ninth circuit, doth hereby appeal from said decree of said United States circuit court of appeals for the ninth circuit to the Supreme Court of the United States. And this appellant prays that said appeal may be allowed and that a transcript of the record and proceedings herein and upon which said decree was made and entered, duly authenticated, may be transmitted to the United States Supreme Court.

C. W. BUNN,
JAMES B. KERR,
H. M. STEPHENS,
Solicitors for Complainant and Appellant.

Dated, January 7, 1901.

113 And now, to wit, on this 7th day of January, 1901, it is ordered that the above appeal in the above-entitled cause be and it is hereby allowed as prayed.

(Signed) WM. B. GILBERT,
Circuit Judge.

(Endorsed:) Petition for appeal and order. Filed Jan. 16, 1901. F. D. Monckton, clerk.

114 United States Circuit Court of Appeals for the Ninth Circuit.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Appellee.

Assignment of Errors.

Comes now the above-named complainant and appellant, The Northern Pacific Railway Company, and makes and files the following assignment of errors upon which it will rely in its appeal from the decree of the court above named made and entered herein on the first day of October, 1900, as follows, to wit:

I.

The court erred in affirming the decrees of the circuit court made and entered in this cause on the 24th day of February and the 8th day of March, 1900.

II.

The court erred in not making and entering a decree in favor of the complainant and appellant, The Northern Pacific Railway Company, and against the defendant and appellee, J. A. Soderberg, and not granting an injunction restraining said appellee from in any manner interfering with the property described in the amended bill of complaint or taking granite therefrom without the consent of the appellant.

III.

115 The court erred in not making and entering a decree that the complainant and appellant was the owner of the property described in the amended bill of complaint.

IV.

The court erred in not making and entering a decree restraining the appellee from committing trespass upon the land described in the amended bill of complaint.

V.

The court erred in holding that the defendant and appellee J. A. Soderberg, is the owner of the alleged placer mining claims known as the "Linea" and "Lillie" and embracing a part of section 19, township 27, north of range 10 east of the Willamette meridian.

VI.

The court erred in holding that said J. A. Soderberg was entitled to have the title to said alleged mineral claims quieted and confirmed in him, and the said decree is erroneous in ordering and adjudging and decreeing the title of said mineral claims, or either of them or any part of either of them, quieted and confirmed in said J. A. Soderberg.

VII.

The court erred in holding that the bond given by the defendant and appellee J. A. Soderberg in the sum of five thousand dollars to secure the performance of the decree and the observance of the provisional injunction to be cancelled and discharged, and said decree is erroneous in ordering and decreeing said bond cancelled and for naught held.

VIII.

The court erred in holding and adjudging the defendant and appellee, J. A. Soderberg, entitled to recover costs herein and said decree is erroneous in adjudging and decreeing that the defendant

and appellee should recover of complainant and appellant costs, charges and disbursements herein.

116 IX.

The court erred in holding and deciding that the land involved herein is "mineral" land within the meaning of that certain act of Congress of the United States entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's sound on the Pacific coast, by the northern route," approved July 2, 1864.

X.

The court erred in holding and deciding that the la described in the amended bill of complaint of complainant and appellant or any part thereof, to wit, an odd-numbered section within less than forty miles of the line of definite location and construction of the railroad of the Northern Pacific Railroad Company, a corporation created under the laws of Congress, was subject to entry or acquisition as stone land or as a placer mineral claim, or subject to entry in any manner whatsoever.

XI.

The court erred in dismissing the bill of complaint of complainant, and the decree is erroneous in so ordering and adjudging.

Wherefore, the complainant and appellant, The Northern Pacific Railway Company, prays that the said decree of the circuit court of appeals of the United States for the ninth circuit be reversed, with directions to render and enter a decree in favor of complainant and appellant and against defendant and appellee in accordance with the prayer for this appeal and the prayer of the amended bill of complaint in this cause.

C. W. BUNN,
JAMES B. KERR,
H. M. STEPHENS,
Solicitors for Complainant and Appellant,
Northern Pacific Railway Company.

117 (Endorsed:) Assignment of errors. Filed Jan. 16, 1901. F. D. Monckton, clerk.

118 United States Circuit Court of Appeals for the Ninth Circuit.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Appellee.

Order Fixing Amount of Appeal Bond.

The complainant and appellant, The Northern Pacific Railway Company, having this day filed its petition for appeal from the de-

cree made and entered herein on the first day of October, 1900, to the Supreme Court of the United States, together with an assignment of errors in due form, and said petition and appeal having this day been allowed,

Now therefore it is ordered that the appeal bond herein be and is hereby fixed at the sum of five hundred dollars ($500.00) conditioned and to the effect that the said Northern Pacific Railway Company, complainant and appellant, shall prosecute its said appeal to effect, and shall answer all damages and costs that may be awarded against it if it shall fail to make its plea and appeal good. Said bond and security to be approved by the above-named court or a judge thereof.

(Signed) WM. B. GILBERT,
Circuit Judge.

Dated, January 7, 1901.

(Endorsed:) Order fixing amount of appeal bond. Filed Jan. 16, 1901, F. D. Monckton, clerk.

119 United States Circuit Court of Appeals for the Ninth Circuit.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Appellee.

Bond on Appeal.

Know all men by these presents, that we, the Northern Pacific Railway Company, a corporation, as principal, and John L. Roberts and A. F. Albertson of the city of Tacoma and State of Washington as sureties, are held and firmly bound unto J. A. Soderberg in the full and just sum of five hundred dollars ($500.00) to be paid to the said J. A. Soderberg, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 7 day of January in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a session of the circuit court of appeals of the United States for the ninth circuit, in a suit pending in said court between the said Northern Pacific Railway Company, complainant and appellant, and J. A. Soderberg, defendant and appellee, a decree was rendered against the said Northern Pacific Railway Company, and the said Northern Pacific Railway Company having obtained from said court an order allowing an appeal to the Supreme Court
of the United States to reverse the decree so entered in the
120 aforesaid suit, and a citation directed to the said J. A. Soderberg is about to be issued citing and admonishing him to be and appear at the United States Supreme Court at the city of Washington in the District of Columbia,

Now therefore, the condition of the above obligation is such that if the said Northern Pacific Railway Company shall prosecute its said appeal to effect and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the obligation is to be void, otherwise to remain in full force and virtue.

NORTHERN PACIFIC RAILWAY COMPANY,

[SEAL.] By C. S. MELLEN, *President.* [SEAL.]
JOHN L. ROBERTS.
A. F. ALBERTSON.

Attest: R. H. RELF,
Assistant Secretary.

STATE OF WASHINGTON, } ss:
County of Pierce, }

John L. Roberts and A. F. Albertson, being first duly sworn, on oath, each for himself, deposes and says: That he is a resident and freeholder in the district of Washington, and that he is worth the sum mentioned in the foregoing bond and obligation over and above all just debts and liabilities and exclusive of property exempt from execution in property situated in the State of Washington.

JOHN L. ROBERTS.
A. F. ALBERTSON.

Subscribed and sworn to before me this 7 day of January, 1901.

A. G. AVERY,
Notary Public Residing at Tacoma, Washington.

121 The foregoing bond and sureties therein are hereby approved this 7th day of January, 1901.

(Signed) WM. B. GILBERT,
Circuit Judge.

(Endorsed:) Bond on appeal. Filed Jan. 16, 1901, F. D. Monckton, clerk.

122 United States Circuit Court of Appeals for the Ninth Circuit.

THE NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, etc., Appellant,
vs.
J. A. SODERBERG, Appellee. } No. 601.

Certificate of Clerk C. C. A. to Transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing one hundred and twenty-one (121) pages, numbered from one (1) to one hundred and twenty-one (121), inclusive, to be a true copy of the record, and of the assignment of errors, and of all proceedings in said United States circuit court of appeals, including the opinion filed, in the above-entitled case, as the same remain and appear of record in my office, and that the same, together, constitute the tran-

script of record on appeal to the Supreme Court of the United States herein.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 18th day of February, A. D., 1901.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

{ Ten-cent United States internal-revenue stamp, canceled Feb. 25, 1901. F. D. M., c'k. }

123 United States Circuit Court of Appeals for the Ninth Circuit.

NORTHERN PACIFIC RAILWAY COMPANY, Complainant and Appellant,
vs.
J. A. SODERBERG, Defendant and Appellee.

Citation.

UNITED STATES OF AMERICA, *ss:*

To J. A. Soderberg, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington in the District of Columbia, within sixty days from the date hereof, pursuant to an appeal duly taken and allowed from that certain decree of the United States circuit court of appeals for the ninth circuit in that certain cause wherein The Northern Pacific Railway Company is complainant and appellant and you, the said J. A. Soderberg, are defendant and appellee, to show cause, if any there be, why the order and decree of affirmance in the said appeal mentioned should not be set aside and corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 7 day of January 1901.

WM. B. GILBERT,
Circuit Judge.

124 Due and regular service of the foregoing citation by receipt of a true copy thereof, is hereby admitted this 10th day of January 1901 at Seattle Wash.

BALLINGER, RONALD & BATTLE,
Solicitors for J. A. Soderberg.

125 [Endorsed:] Copy No. 601. U. S. circuit court of appeals for ninth circuit Northern Pacific R'y Co. appellant *vs.* J. A. Soderberg appellee Citation Filed Jan. 16 1901 F. D. Monckton, clerk C. W. Bunn, James B. Kerr & H. M. Stephens att'ys for app'll'ts.

Endorsed on cover: File No. 18,083. U. S. C. C. of appeals, 9th circuit. Term No. 278 The Northern Pacific Railway Company appellant, *vs.* J. A. Soderberg Filed March 18, 1901.